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OF

Publick Acts and Papers,

RELATING TO THE

PRINCIPLES

OF

ARMED NEUTRALITY,

BROUGHT FORWARD IN THE YEARS

1780 AND 1781.

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COLLECTION.

(No. 1.)

TRANSLATION of the Chapters 273 and 287, of the CONSOLATO DEL MARE*, relating to Prize Laws.

CHAP. CCLXXIII.

OF MERCHANT VESSELS CAPTURED BY AN ARMED SHIP.

SECTION I.

IF an armed Ship, or Cruizer, meets with a Merchant Veſſel belonging to an Enemy, and carrying a Cargo, the Property of an Enemy, common

* With reſpect to the Antiquity of the *Conſolato*, the Reader is referred to the Table prefixed to the Italian Editions, in which it is ſpecifically aſſerted to have been received at Rome in the Year 1075; and at various Places, at various Periods, through the

common Senſe will ſufficiently point out what is to be done; it is therefore, unneceſſary to lay down any Rules for ſuch a Caſe.

II. If the captured Veſſel is neutral Property, and the Cargo the Property of Enemies, the Captor may compel the Merchant Veſſel to carry the Enemy's Cargo to a Place of Safety, where the Prize may be ſecure from all Danger of Re-capture, paying to the Veſſel the whole Freight, which ſhe would have earned at her delivering Port; and this Freight ſhall be aſcertained by the Ship's Papers, or in Default of neceſſary Documents, the Oath of the Maſter ſhall be received as to the Amount of the Freight.

III. Moreover, if the Captor is in a Place of Safety, where he may be ſecure of his Prize, yet is deſirous to have the Cargo carried to ſome other

11th, 12th, and 13th Centuries. But let him conſult alſo, Giannoni's Iſt. di Napoli, lib. xi. chap. 6. in which, according to ſome Opinions, this Compilation is ſuppoſed not to have been made till the Time of Louis IX. of France, towards the Middle of the 13th Century. It is, however, generally allowed to have been compoſed from the Amalphitan Table; and as that is ſuppoſed to have exiſted as a Body of Sea Laws, of great and extenſive Authority in the Mediterranean, from the Cloſe of the 11th Century, there may perhaps be no great Variation in the Subſtance of theſe Two Accounts.

Port, the neutral Veſſel is bound to carry it thither; but for this Service, there ought to be a Compenſation agreed upon between them; or, in Default of any ſpecial Agreement, the Merchant Veſſel ſhall receive for that Service the ordinary Freight that any other Veſſel would have earned for ſuch a Voyage, or even more; and this is to be underſtood of a Ship that has arrived in the Place where the Captor may ſecure his Prize; that is to ſay, in the Port of a Friend; and going on an ulterior Voyage to that Port, to which the Captor wiſhes her to carry the Cargo which he has taken.

IV. If it ſhall happen that the Maſter of the captured Veſſel or any of the Crew, ſhall claim any Part of the Cargo as their own, they ought not to be believed on their ſimple Word; but the Ship's Papers or Invoice ſhall be inſpected; and in Defect of ſuch Papers, the Maſter and his Mariners ſhall be put to their Oaths; and if, on their Oaths, they claim the Property as their own, the Captor ſhall reſtore it to them; regard being paid, at the ſame Time, to the Credit of thoſe who ſwear, and make the Claim.

V. If the Maſter of the captured Veſſel ſhall refuſe to carry the Cargo, being Enemy's Property,

to ſome ſuch Place of Safety, at the Command of the Captor, the Captor may ſink the Veſſel, if he thinks fit, without Controul from any Power or Authority whatever, taking Care to preſerve the Lives of thoſe who are in her. This muſt be underſtood however, of a Caſe where the whole Cargo, or at leaſt the greater Part, is Enemy's Property.

VI. If the Ship ſhould belong to the Enemy, the Cargo being either in the Whole, or in Part, neutral Property, ſome reaſonable Agreement ſhould be entered into, on account of the Ship now become lawful Prize, between the Captor and the Merchants owning the Cargo.

VII. If the Merchants refuſe to enter into ſuch an Agreement, the Captor may ſend the Veſſel home to the Country whoſe Commiſſion he bears; and in that Caſe the Merchants ſhall pay the Freight, which they were to have paid at the delivering Port; and if any Damage is occaſioned by this Proceeding, the Captor is not bound to make Compenſation; becauſe the Merchants had refuſed to treat reſpecting the Ship, after it had become lawful Prize; and for this farther Reaſon alſo, that the Ship is frequently of more Value than the Cargo ſhe carries.

VIII. If,

VIII. If, on the other Hand, the Merchants are willing to come to a reaſonable Agreement, and the Captor, from Arrogance, or other wrong Motives, refuſes to agree, and forcibly ſends the Cargo away, the Merchants are not bound to pay the Whole, nor any Part of the Freight; and beſides, the Captor ſhall make Compenſation for any Damage he may occaſion to them.

IX. If the Capture ſhould be made in a Place where the Merchants have it not in their Power to make good their Agreement, but are nevertheleſs Men of Repute, and worthy to be truſted, the Captor ſhall not ſend away the Veſſel without being liable to the Damage; but if the Merchants are not Men of known Credit, and cannot make good their ſtipulated Payment, he may then act as it is above directed.

CHAP. CCLXXXVII.

OF CASES OF RECAPTURE.

SECTION I.

IF a Ship is taken by the Enemy, and afterwards another Ship of a Friend comes up, and effects a Recapture; the Veſſel, and all that is in her, ſhall be reſtored to the former Proprietors, on Payment of a reaſonable Salvage for the Expence, and Trouble, and Danger that have been incurred; but this is to be underſtood of Recaptures effected within the Seigniory, or territorial Seas of the Country to which the captured Veſſel belongs, or before the Enemy had ſecured the Veſſel to himſelf, in a Place of Safety.

II. If the Recapture has been effected within the Enemy's Territories, or in a Place where the Enemy was in entire Poſſeſſion of his Prize, that is, in a Place of Security, the Proprietors ſhall not recover, nor ſhall the Recaptors claim any Salvage; for they are entitled to the whole Benefit of the Recapture,

Recapture, without Oppoſition, from any Rights of Seigniory, or the Claims of any Perſon whatever.

III. If an Enemy, having made a Capture of a Veſſel, quits his Prize on Appearance of another Veſſel, either from Fear, or from any Doubt that he may entertain of her, and the Veſſel, on whoſe Account the captured Ship was abandoned, takes Poſſeſſion of the Veſſel that has been relinquiſhed, and brings her into Port; ſhe ſhall be reſtored to the Proprietor, or his Heirs, without Oppoſition, on Payment of a reaſonable Salvage, to be fixed by Agreement between the Parties, or if the Parties cannot agree, by the Arbitration of creditable Perſons.

IV. If it ſhould happen that any one abandons his Veſſel through Fear of his Enemy; and any friendly Veſſel falls in with the Ship that has been deſerted, and brings her into a Place of Security; that is to ſay, in a Caſe where the finding Veſſel has not retaken the Ship from the Enemy, and where the Enemy had not carried her into a Place of Security, and had not taken her from the Owner; the Finders ſhall have no Claim to the Veſſel, nor to the Cargo on board; but, by the Uſe and Cuſtom of the Sea, they may demand a

reaſonable Salvage, to be ſettled, either by Agreement, or by Reference to the Arbitration of creditable Perſons; for it is not fit that any one ſhould endeavour to take undue Advantage of the Misfortunes of another; ſince he cannot foreſee what may happen to himſelf; and becauſe, every one ſhould be ready to ſubmit his Diſputes, eſpecially in Caſes like the preſent, to the Arbitration of Two unexceptionable Perſons.

V. It is beſides to be underſtood, in all that has been ſaid, that every Thing ſhall be done without Fraud; for no Man can tell what may be his own Caſe; and it ſometimes happens that the Deceit and Injury which a Perſon attempts to practiſe on others, light upon himſelf; therefore, if any Perſons, knowing that a Ship is going on a Voyage, where ſhe muſt be expoſed to Danger or Alarm from the Enemy, fit out a Veſſel with a View, and for the Purpoſe of doing Injury to that Ship or any other, in making Salvage at their Expence; or with a Deſign of getting Poſſeſſion of the Ship and Cargo; If it can be proved againſt them, that they went out with any ſuch Intention, ſuch Perſons ſhall not be entitled to any Salvage on the Ship or Cargo, although the Owner may have abandoned her;

her; nor even, although ſhe may have been taken by the Enemy.

VI. If thoſe, who fitted out the Veſſel, cannot eſtabliſh, in Proof, that they did not arm with any of the before-mentioned Intentions; or if it ſhould be proved againſt them, that they armed for the Purpoſe of doing Injury to any one, or generally to all, whom they might meet, in the Form and Manner of Enemies; in ſuch a caſe, whether they bring in a Veſſel, with or without a Cargo—whether it ſhall be re-taken from the Enemy, or merely found by them, they ſhall take no Benefit from it, but the Whole ſhall be reſtored to the former Proprietors; and moreover ſuch Perſons, ſo arming, ſhall be delivered over to Juſtice, to be treated as Robbers and Pirates, if the Fact can be eſtabliſhed in Proof.

VII. If they are not convicted of ſuch an Intention, having either retaken or found a Veſſel in any of the Situations above-mentioned, they ſhall be entitled to their full Right and Benefit, according to the preceding Regulations. But if the Matter ſhall remain in Doubt, or if it ſhall reſt with them to diſprove the Charge, neither they, nor any that were with them, nor any that are intereſted in the Event,

Event, ſhall be received to give Evidence in their Favour; nor ſhall any Perſon of a covetous Diſpoſition, nor any one, who may be ſuſpected of being biaſſed by Money, be a Witneſs for them.

VIII. If an Enemy ſhall have made a Capture of a Veſſel or Cargo, and ſhall afterwards abandon it, voluntarily, and not from any Fear or Apprehenſion of any Veſſel coming upon him; and if any Perſons ſhall find the Veſſel or Cargo that has been voluntarily abandoned, and bring it to a Place of Security, the Property ſhall not be acquired to them, if any Owner can be found; but they ſhall receive a reaſonable Salvage, to be fixed, at the Diſcretion of reputable Perſons of the Place, to which the Ship or Goods ſhall be carried.

IX. If, after the Expiration of a reaſonable Time, no Owner comes forward, the Finders ſhall receive for their Salvage One Half of the Proceeds, and the other Half ſhall be applied in the Manner that has been expreſſed and declared in a preceding Chapter *.

X. If

* In Chap. 249, the ſame Proportion of a Moiety is given to the Finder of Goods found floating in Port, &c. after the Expiration of a Year and a Day, if no Owner appears to claim.

The

X. If the Enemy, being in Poſſeſſion of any Ship or Cargo, ſhall not have deſerted it voluntarily, but ſhall have been obliged to abandon it by Storm or Tempeſt, or on account of any Ship or Veſſel by whom he may have been alarmed, the ſame Rule ſhall be obſerved as if the Enemy had quitted the ſame voluntarily, and of his own Accord.

XI. If the Enemy, after a Capture, comes to any Place where he takes a Ranſom for his Prize, if the Proprietors wiſh to have their Veſſel or Cargo again, he or they who have ranſomed her are bound to deliver her up to the original Owners, on Payment of the Debt and Charges, and ſome further Allowance beſides, if they chooſe to accept it.

XII. If an Enemy, on Capture of a Ship or Cargo, ſhall make a Gift of it, ſuch a Donation or Gift ſhall not be valid on any Account; except that if a Gift is made of the Ship or Cargo, to

The other Moiety was to be divided into Two Parts of which the Lord of the Juriſdiction was to retain one; and to apply the other to pious Purpoſes, for the Soul of the Proprietor.—"All hora la giuſtitia debba dare a quello che trovata l'haverà, la metà per ſuo beveraggio, et della metà che rimanerà, debba fare la giuſtitia due parti; et può pigliarne lui una parte, et l'altra che rimane, debbela dare per amor di Dio, dove a lui piace, per l'anima di quello, di chì farà ſtata."

thoſe

thoſe to whom it belonged, ſuch Donation ſhall be valid. But if the Captor bargains with the Maſter in theſe Words, "We are willing to give you your "Ship for nothing, but muſt have a Ranſom for the Cargo," ſuch a Donation ſhall not be good; becauſe, in the Caſe of which we are now ſpeaking, the Enemy had not carried it to a Place of Security, ſo as to ſay, that he might not loſe it; notwithſtanding that he might ſo far have obtained Power over his Prize, as to be able to burn or ſink it; though, in ſuch Caſe, it would be totally loſt both to him and to the Owner; it is to be underſtood therefore that if the Cargo is ranſomed, the Maſter to whom his Ship has been ſo given, is bound to contribute to the Ranſom paid for the Cargo according to the Value of the Ship; and the ſame rule ſhall be obſerved, *e contra* alſo, and applied equally to the Ranſom of Ship or Cargo.

XIII. If the Captor ſhall have taken the Prize to a Place of Security; that is, if it ſhall have been carried out of the Seas of the Enemy, where a Recapture might be effected; if, when the Captor ſhall have it in ſafe Poſſeſſion, and in his own Power, he ſhall make a Donation or Sale of the Ship or Cargo, ſuch a Donation or Sale ſhall be valid, without Exception, from any Quarter; unleſs

leſs he, to whom the Donation was made, ſhould have accepted it with an Intention of doing a Kindneſs to the Owner, and for his Benefit; in that Caſe, he may reſtore it if he pleaſes; but otherwiſe, he is not compellable by any Perſon, nor on any account.

XIV. If, however, he, to whom the Property belonged, can ſhew that there has been any Fraud in the Buſineſs, the Donation ſhall not on any account avail; but he, to whom it was made, ought to be ſeized by the Lord of the Country, and puniſhed in Goods and in Perſon, according to the Circumſtances of the Caſe; and the Ship or Cargo ſhall be reſtored to the former Owner.

XV. If the Ship or Cargo ſhall have been ſold by the Enemy to any one, the Sale ſhall be valid, provided that he, who has purchaſed, can ſhew that the Sale was made to him by the Enemy in a Place of Security, that is, where the Enemy held the Goods in Queſtion, *in ſuo dominio*; and in caſe any one, who pretends to have acquired the Ship or Cargo by a juſt Title, cannot prove the aſſerted Sale, it ſhall not be valid; and if the former Owner appears, and can make Proof of his Property, it

ſhall be reſtored to him. The Evidence of theſe diſputed Claims ſhall be diſcuſſed before Two reputable Perſons of the Country where the Diſpute ariſes, and without Fraud; and if any Fraud is diſcovered, the Party againſt whom the Fraud is proved, ſhall be bound to pay to the other Party Coſts, Damages, and Intereſt; and beſides, the Party conſenting to the Fraud ſhall be delivered over to the Juſtice of the Country.

XVI. If the Maſter, or Perſon acting for him, recovers the Ship or Cargo by any Means, he is bound to make Reſtitution to the Proprietors, according to their ſeveral Proportions, on Payment of the Expences *pro rata*.

XVII. If the Maſter ſhall redeem any Part of the Cargo, or make any Agreement with the Conſent of the major Part of his Co-partners, by which he ſhall regain the Ship or Cargo, he may compel them to contribute, by Courſe of Juſtice, becauſe they are as much under an Obligation to him, as if they had agreed to take Part in building or purchaſing a new Ship.

XVIII. But if the Maſter makes any Agreement, without the Conſent of his Partners, or the major Part

Part of them, they are not bound to any Thing, unleſs they like it; nor is the Maſter anſwerable to them for the Rights and Intereſts which they had in the Ship at the Time of Capture; ſaving for any previous Accounts which might be ſtill remaining unſettled, reſpecting their Shares in the Ship or Cargo at the Time it was taken by the Enemy.

XIX. If the original Proprietors are diſpoſed to reſume their Shares, and the Maſter makes any Oppoſition, the Juſtice of the Country may compel him to acquieſce; for there can be no Ground of reaſonable Reſiſtance on his Part, if they are willing to pay their Proportion of the Expence; and it would be manifeſtly unjuſt that any one ſhould diſpoſſeſs the Reſt of their Property.

XX. But if the Maſter, or any one for him, redeems his Ship or Cargo, after the Enemy has gained a juſt Title in it, and thoſe who were part Owners refuſe to pay, as before ſpecified, the Maſter, or his Agent, ought to repeat his Demand upon them ſeveral Times, and call upon them to pay their Share; and if they ſtill refuſe, it ſhall be put up to Auction, with Permiſſion of the Government, and be diſpoſed of to the beſt Bidder.

XXI. If

XXI. If the Ship or Cargo ſhall be ſold for more, after ſuch Refuſal, than the Ranſom paid, the Surplus ſhall be paid to the Owners, according to their Shares, if the Maſter chooſes it; otherwiſe, he is not obliged. And the Maſter ſhall have the Privilege of retaining the Goods in Queſtion at the Price that others are willing to give for them.

XXII. If the Sale ſhall not produce ſo much as the Ranſom; if the Maſter made the Ranſom without the Conſent of his Partners, they are not bound for the Deficiency, unleſs they chooſe it; and therefore it is reaſonable that the Maſter, or his Agent, ſhould have the Privilege of retaining, at the Price that any other Perſon would give, as the Deficiency would fall upon him; ſaving, however, that if any of the Partners are inclined to reſume their Shares, they are bound to make good the Deficiency to him *pro rata*. All the Reaſonings, and Caſes and Conditions above-mentioned, ſhall be taken under the Suppoſition that the Enemy had carried the Prize into a Place of Security; and that the Ranſom or Sale had been made fairly and without Fraud.

(No. 2.)

TREATY of Alliance and Commerce between Great Britain and Sweden, concluded at Whitehall, October 21, 1661.

Article XI.

ALTHOUGH the foregoing Articles of this Treaty, and the Laws of Friendſhip, do forbid, that either of the Confederates ſhall furniſh any Aid or Supplies to the Enemies of the other, yet it is by no Means to be underſtood, that either Confederate, with his Subjects and Inhabitants, who is not a Party in a War, ſhall be reſtrained the Liberty of Trade and Navigation with the Enemies of the other Confederate, who is involved in ſuch War; provided only that no Goods called Contraband, and eſpecially, neither Money, nor Proviſions, nor Arms, Bombs with their Fuzees and other Appurtenances, Fire-balls, Gunpowder, Matches, Cannon Ball, Spears, Swords, Lances, Pikes, Halberts, Guns, Mortars, Petards, Granadoes, Muſket-reſts, Bandeliers, Saltpetre, Muſkets, Muſket-bullets, Helmets, Head-pieces, Breaſt-plates, Coats

of Mail commonly called Cuiraſſes, and the like Kind of Arms; Soldiers, Horſes, with their Furniture, Holſters, Belts, nor any other Inſtruments of War; nor Ships of War and Guard-ſhips, be carried to the Enemies of the One Confederate, on the Penalty of being made Prize without Hopes of Redemption if they are ſeized by the other Confederate; nor ſhall either Confederate permit, that the Rebels or Enemies of the other be aſſiſted by any of his Subjects, or that any Ships be ſold or lent to, or in any Manner made uſe of by the Enemies or Rebels of the other to his Diſadvantage or Detriment: but it ſhall be lawful for either of the Confederates, or his People or Subjects to trade with the Enemies of the other, and to carry them any Merchandizes whatever (not above excepted) without any Impediment; provided they are not carried to thoſe Ports or Places, which are beſieged by the other; in which Caſe they ſhall have free Leave either to ſell their Goods to the Beſiegers, or to repair with them to any other Port, which is not beſieged.

Article XII.

But, leſt ſuch Freedom of Navigation and Paſſage of the one Confederate ſhould be of Detriment

ment to the other, while engaged in War by Sea or Land with other Nations, and leſt the Goods and Merchandizes of the Enemies ſhould be concealed under the Name of a Friend and Ally, for the avoiding all Suſpicion and Fraud of ſuch Sort, it is agreed, that all Ships, Carriages, Wares, and Men, belonging to either of the Confederates, ſhall be furniſhed in their Journeys and Voyages with Safe-Conducts, commonly called Paſſports and Certificates, ſuch as are under-written, *verbatim*, ſigned and ſubſcribed by the Chief Magiſtrate of that Province and City, or by the Chief Commiſſioners of the Cuſtoms and Duties, and ſpecifying the true Names of the Ships, Carriages, Goods, and Maſters of the Veſſels, as alſo the exact Dates, without any Fraud or Colluſion, together with ſuch other Deſcriptions of that Sort as are expreſſed in the following Form of a ſafe Conduct and Certificate. Wherefore, if any Perſon ſhall affirm upon the Oath by which he is bound to his King, State, or City, that he hath given in true Accounts, and ſhall afterwards be convicted, on ſufficient Proof of any wilful Fraud therein, he ſhall be ſeverely puniſhed, as a Tranſgreſſor of the ſaid Oath.

FORM OF THE PASSPORT.

WE N. N. Governor or Chief Magiſtrate, or the Commiſſioners of the Duties and Cuſtoms of the City or Province of N. [the Title or Office of the reſpective Government of that Place being added] do make known and certify, that on the Day of the Month of in the Year N. N. N. Citizens and Inhabitants of N. and Subjects of his ſacred royal Majeſty of Sweden, perſonally appeared before us in the City or Town of N. in the Dominions of his ſacred royal Majeſty of Sweden, and declared to us upon the Oath by which they are bound to our moſt gracious Sovereign his ſacred royal Majeſty of Sweden, and to our City, that the Ship or Veſſel called N. of about Laſts or Tons, belongs to the Port, City, or Town of N. in the Dominions of N. and that the ſaid Ship does rightfully belong to him or other Subjects of his ſacred royal Majeſty of Sweden; that ſhe is bound directly from the Port of N. to the Port of N. laden with the following Merchandize; viz. [here ſhall be ſpecified the Goods, with their Quantity and Quality, for Example, about ſo many Cheſts or Bales, about ſo many Hogſheads, &c. according to the Quantity and Condition

Condition of them]; and likewiſe affirmed on the Oath aforeſaid, that ſo much only of the ſaid Goods and Merchandize belong to the Subjects of his ſacred royal Majeſty of Sweden, or ſo much of ſuch Goods belong to N. N. N. [ſpecifying what Nation the Proprietors are of]; and that they have declared upon their ſaid Oath, that the ſaid Goods above ſpecified, and no others, are put on board, or are to be put on board, the above named Ship for the ſaid Voyage, and that no Part of thoſe Goods belong to any other Perſon whatever but thoſe above-mentioned; and that no Goods are diſguiſed or concealed therein under any fictitious Name whatſoever, but that the Wares above-mentioned are truly and really put on board for the Uſe of the ſaid Owners and no others; and that the Captain of the ſaid Ship, named N. is a Citizen of the City of N. Therefore, ſince it fully appears to us [the Governor or Chief Magiſtrate or Commiſſioners of the Duties and Cuſtoms of the City aforeſaid] after ſtrict Examination, that the ſaid Ship or Veſſel, and the Goods on board the ſame are free, and do truly and really belong to the Subjects of his ſacred royal Majeſty of Sweden, or to the Inhabitants of other Nations as aforeſaid, We do moſt humbly and earneſtly require of all and ſingular Powers by Land and Sea, Kings,

Princes, Republicks, and free Cities, alſo of all Generals, Admirals, Commanders, Officers and Governors of Ports, and all others, guarding any Harbour or Sea, who may happen to meet this Ship in her Voyage, or into or through whoſe Squadrons ſhe may happen to fall or paſs, or in whoſe Ports ſhe may happen to ſtay, that for the Sake of the Alliance and Friendſhip which ſubſiſt reſpectively between them or their Superiors, and his ſacred royal Majeſty our moſt gracious Sovereign the King of Sweden, they will not only permit the ſaid Captain with the ſaid Ship N. and the Men, Goods, and Merchandize belonging to the ſame to proſecute his Voyage freely, without Lett or Moleſtation, but alſo, if he thinks fit to depart out of the ſaid Harbour elſewhere, that they will ſhew all kind Offices to him and his Ship, as a Subject of his ſacred royal Majeſty of Sweden, as they ſhall in like Manner experience the ſame from his ſacred royal Majeſty of Sweden, and from all his Miniſters and Subjects in the like or any other Caſe.

In Witneſs whereof we have taken Care, that the ſaid Preſents, ſigned by our Hands, are ſealed with the Seal of our City.

Given, &c.

Therefore,

Therefore, when the Goods, Ships, or Men of either Confederate, or his Subjects and Inhabitants, ſhall meet in the open Sea, or in any Ports, Havens, Countries or Places whatever, with any Ships of War or Privateers, or any Subjects and Inhabitants of the other Confederate, after producing their Letters of Safe Conduct and Certificates aforeſaid, nothing farther ſhall be demanded of them, nor any Inquiry whatever be made with reſpect to the Goods, Ships, or Men, much leſs ſhall they be injured, damaged, or moleſted, but they ſhall be ſuffered freely to proſecute their Voyage and Purpoſe. But in caſe that the ſaid ſolemn and ſtated Form of a Certificate is not produced, or there is any other juſt and ſtrong Cauſe of Suſpicion, why a Ship ought to be ſearched (which ſhall only be deemed juſtifiable in ſuch Caſe, and not otherwiſe), then if the Goods of an Enemy are found in ſuch Ship of the Confederate, that Part only which belongs to the Enemy ſhall be made Prize, and what belongs to the Confederate ſhall be immediately reſtored: The ſame Rule ſhall likewiſe be obſerved, if the Goods of the other Confederate are found on board a Ship of the Enemy. If any Thing ſhall be done on either Side contrary to the genuine Senſe of this Article, both Confederates ſhall take care that the

ſevereſt Puniſhments due for the moſt heinous Crimes be inflicted on ſuch of their Subjects and Inhabitants as ſhall offend herein, for their Contempt and Tranſgreſſion of the Royal Commands; and that full and immediate Satisfaction be made to the injured Party, for all Damage and Expences, (of which the moſt ſummary Proof ſhall be admitted,) by the other Confederate, or his Subjects and Inhabitants, without any intricate Niceties of Law.

(No. 3.)

TREATY of Alliance and Commerce between Great Britain and Denmark, concluded at Copenhagen, July 11, 1670.

Article XVI.

IT ſhall be lawful for either of the Confederates, and their Subjects or People, to trade with the Enemies of the other, and to carry to them, or furniſh them with all Kinds of Merchandizes, (except only prohibited Goods, which are called Contraband), without any Impediment, unleſs in Ports and Places beſieged by the other; which nevertheleſs if they ſhall do, it ſhall be free for them either to ſell their Goods to the Beſiegers, or go to any other Port or Place not beſieged.

Article XX.

But, leſt ſuch Freedom of Navigation or Paſſage of the one Ally, and his Subjects and People, during the War, which the other may have by Sea or Land with any other Country, may be to the Prejudice of the other Ally, and that Goods and Merchandizes,

chandizes, belonging to the Enemy, may be fraudulently concealed under Colour of being in Amity, for preventing Fraud, and taking away all Suſpicion, it is thought fit, that the Ships, Goods, and Men belonging to the other Ally, in their Paſſage and Voyages, be furniſhed with Letters of Paſsport and Certificate, the Forms whereof ought to be as follow:

FORM OF THE DANISH PASSPORT AND CERTIFICATE.

CHRISTIAN the Fifth, by the Grace of God, King of Denmark and Norway, &c.

BE it known to all and ſingular Perſons, who ſhall ſee theſe our Letters of Paſſport, that our Subject and Citizen of our City of hath humbly repreſented to us, that the ſhip called the of the Burden of Tons, doth appertain to him and certain other of our Subjects, and that they are the ſole Proprietors of the ſame, and that the ſaid Ship is laden with certain Goods, a Particular whereof is contained in a Cocket, which has been made out by the Officers of our Cuſtoms, and is now on board the ſaid Ship; and that the ſame belongs to our Subjects,

Subjects, or others, having an intereſt therein; who are the Subjects of Neutral Powers; and that ſhe is ready to depart from the Port of in order to proceed to ſome other Place or Places where ſhe may commodiouſly traffick with the ſaid Goods, which are not contraband, nor appertaining to either of the Parties now engaged in War; or in order to earn their Freight; all which having been atteſted by our ſaid Subject in Writing duly ſigned by him, and affirmed by virtue of his Oath to be true, upon Pain of Confiſcation of the ſaid Goods, We have thought proper to grant him theſe our Letters of Paſſport, and therefore we deſire and requeſt all Governors of Countries, and Commanders at Sea, all Kings, Princes, Republicks and free Towns, and particularly the Parties now engaged in War, and their Commanders, Admirals, Generals, Officers, Governors of Ports, Commanders of Ships, Captains, Freighters, and all others having any Command at Sea, or the Guard of any Port, whom the ſaid Ship ſhall happen to meet with, or among whoſe Fleets or Ships ſhe may happen to fall, or in whoſe Ports ſhe may happen to ſtay, that in virtue of the Alliance and Amity, which ſubſiſt between us and the King or State, they not only ſuffer the ſaid Maſter with the Ship Men, Goods, and

all

all Merchandizes which are on board her, to purſue his Voyage towards any Place whatſoever with full Liberty, without being any way moleſted, hindered, or detained, but that they likewiſe ſhew him all kind Offices of Civility, as unto our Subject, if any Occaſion ſhould offer; which we and our Subjects ſhall be ready to acknowledge, on the like or any other Occaſion. Given this Day of in the Year

We, the Preſident, Conſuls, and Senators of the Town of do atteſt and certify, that N. N. Citizen and Inhabitant of the City or Town of on the Day of in the Year came and appeared perſonally before us, and declared to us by virtue of the Oath by which he is bound to our Sovereign Lord the King, that the Ship or Veſſel named of the Burden of Tons, belongs to the Port, City, or Town of in the Province of and that the ſaid Ship does really and truly appertain to him, and is now ready to depart directly from the Port of laden with the Goods ſpecified in the Cocket which he hath received from the Officers of the Cuſtoms; and that he hath affirmed upon his ſaid Oath, that the above mentioned Ship, together with the Goods and Merchandizes with which

which ſhe is laden, belongs to his ſaid Majeſty's Subjects only, and that ſhe does not carry any prohibited Goods appertaining to either of the parties, now engaged in War.

In Witneſs whereof, we have cauſed the preſent Certificate to be ſigned by the Syndick of our Town, and have thereunto put our Seal. Given, &c.

When therefore the Merchandize, Goods, Ships, or Men, of either of the Allies and their Subjects and People, ſhall meet in open Sea, Straits, Ports, Havens, Lands, and Places whatever, the Ships of War, whether Publick or Private, or the Men, Subjects, and People of the other Ally, upon exhibiting only the aforeſaid Letters of Safe-conduct and Certificates, nothing more ſhall be required of them; nor ſhall Search be made after the Goods Ships, or Men; nor ſhall they be any other Way whatſoever moleſted or troubled, but ſhall be ſuffered with all Freedom to purſue their intended Voyage. But if this ſolemn and ſet Form of Paſsport and Certificate is not exhibited, or there is any other juſt or urgent Cauſe of Suſpicion, then ſhall the Ship be ſearched, which is nevertheleſs underſtood to be permitted in this Caſe only. And if

any

any Thing ſhall be committed, contrary to the true Meaning of this Article, againſt either of the Allies, each of the ſaid Allies ſhall cauſe his Subjects and People offending to be ſeverely puniſhed, and full and intire Satisfaction to be forthwith given, and without Delay, to the Party injured, and his Subjects and People, for their Whole Loſs and Expences.

(No. 4.)

LETTER from the Duke of Newcaſtle to M. Michell, the King of Pruſſia's Secretary of Embaſſy, in Anſwer to the Memorial and other Papers relative to the Sileſian Loan, delivered by him to the Duke of Newcaſtle, 23d November and 13th December 1752.

SIR, Whitehall, February 8, 1753.

I LOST no Time in laying before the King the Memorial which you delivered to me on the 23d of November laſt, with the Papers that accompanied it.

His Majeſty found the Contents of it ſo extraordinary, that He would not return an Anſwer to it, or take any Reſolution upon it, till He had cauſed both the Memorial, and the *Expoſition des Motifs*, &c. which you put into my Hands ſoon after, by way of Juſtification of what had paſſed at Berlin, to be maturely conſidered, and till His Majeſty ſhould thereby be enabled to ſet the Proceedings of the Courts of Admiralty here in their true

true Light; to the End that his Pruſſian Majeſty, and the whole World, might be rightly informed of the Regularity of their Conduct, in which they appear to have followed the only Method which has ever been practiſed by Nations where Diſputes of this Nature could happen, and ſtrictly to have conformed themſelves to the Law of Nations, univerſally allowed to be the only Rule in ſuch Caſes, when there is nothing ſtipulated to the contrary, by particular Treaties between the Parties concerned.

This Examination, and the full Knowledge of the Facts reſulting from it, will ſhew ſo clearly the Irregularity of the Proceedings of thoſe Perſons to whom this Affair was referred at Berlin, that it is not doubted, from his Pruſſian Majeſty's Juſtice and Diſcernment, but that he will be convinced thereof, and will revoke the Detention of the Sums aſſigned upon Sileſia, the Payment of which his Pruſſian Majeſty engaged to the Empreſs Queen to take upon himſelf, and of which the Reimburſement was an expreſs Article in the Treaties by which the Ceſſion of that Dutchy was made.

I, therefore,

I, therefore, have the King's Orders to ſend you the Report made to His Majeſty, upon the Papers above-mentioned, by Sir George Lee, Judge of the Prerogative Court; Dr. Paul, His Majeſty's Advocate-general in the Courts of Civil Law; Sir Dudley Ryder and Mr. Murray, His Majeſty's Attorney and Solicitor-general. This Report is founded on the Principles of the Law of Nations, received and acknowledged by Authorities of the greateſt Weight in all Countries; ſo that His Majeſty does not doubt but that it will have the Effect deſired.

The Points upon which this whole Affair turns, and which are deciſive, are,

Firſt, That Affairs of this Kind are, and can be, cognizable only in the Courts belonging to that Power where the Seizure is made; and, conſequently, that the erecting Foreign Courts, or Juriſdictions, elſewhere, to take Cognizance thereof, is contrary to the known Practice of all Nations in the like Caſes, and, therefore, a Proceeding which none can admit.

Secondly, That thoſe Courts, which are generally ſtiled Courts of Admiralty, and which include both the inferior Courts and the Courts of Appeal,

always decide according to the univerſal Law of Nations only, except in thoſe Caſes where there are particular Treaties between the Powers concerned, which have altered the Diſpoſitions of the Law of Nations, or deviate from them.

Thirdly, That the Deciſions in the Caſes complained of appear, by the incloſed Report, to have been made ſingly, upon the Rule preſcribed by the Law of Nations; which Rule is clearly eſtabliſhed, by the conſtant Practice of other Nations, and by the Authority of the greateſt Men.

Fourthly, That, in the Caſe in Queſtion there cannot even be pretended to be any Treaty that has altered this Rule, or by virtue of which the Parties could claim any Privileges which the Law of Nations does not allow them.

Fifthly, That as, in the preſent Caſe, no juſt Grievance can be alleged, nor the leaſt Reaſon given, for ſaying, That Juſtice has been denied, when regularly demanded; and as, in moſt of the Caſes complained of, it was the Complainants themſelves who neglected the only proper Means of procuring it, there cannot conſequently be any juſt Cauſe or Foundation for Reprizals.

Sixthly,

Sixthly, That, even though Reprizals might be juſtified by the known and general Rules of the Law of Nations, it appears by the Report, and indeed from Conſiderations which muſt occur to every body, that Sums due to the King's Subjects by the Empreſs Queen, and aſſigned by her upon Sileſia, of which Sums his Pruſſian Majeſty took upon himſelf the Payment, both by the Treaty of Breſlau and by that of Dreſden, in Conſideration of the Ceſſion of that Country, and which, by virtue of that very Ceſſion, ought to have been fully and abſolutely diſcharged in the Year 1745, that is to ſay, One Year before any of the Facts complained of did happen; could not, either in Juſtice or Reaſon, or according to what is the conſtant Practice between all the moſt reſpectable Powers, be ſeized, or ſtopped, by way of Reprizals.

The ſeveral Facts which are particularly mentioned above, are ſo clearly ſtated and proved in the incloſed Report, that I ſhall not repeat the particular Reaſons and Authorites alleged in ſupport of them, and in Juſtification of the Conduct and Proceedings in Queſtion. The King is perſuaded that theſe Reaſons will be ſufficient, alſo, to determine the Judgement of all impartial People in the preſent Caſe.

It is material to obſerve upon this Subject, that this Debt on Sileſia was contracted by the late Emperor Charles the Sixth, who engaged not only to fulfil the Conditions expreſſed in the Contract, but even to give the Creditors ſuch further Security as they might afterwards reaſonably aſk. This Condition has been very ill performed by a Tranſfer of the Debt, which had put it in the Power of a Third Perſon to ſeize and confiſcate it.

You will not be ſurprized, Sir, that, in an Affair which has ſo greatly alarmed the whole Nation, who are entitled to that Protection which His Majeſty cannot diſpenſe with himſelf from granting, the King has taken Time to have Things examined to the Bottom, and that His Majeſty finds himſelf obliged by the Facts, to adhere to the Juſtice and Legality of what has been done in His Courts, and not to admit the irregular Proceedings which have been carried on elſewhere.

The late War furniſhed many Inſtances, which ought to have convinced all Europe how ſcrupulouſly the Courts here do Juſtice upon ſuch Occaſions. They did not even avail themſelves of an open War, to ſeize or detain the Effects of the Enemy, when it appeared that thoſe Effects were

taken wrongfully before the War; this Circumſtance muſt do Honour to their Proceedings, and will, at the ſame Time, ſhew, that it was as little neceſſary as proper, to have recourſe elſewhere to Proceedings intirely new and unuſual.

The King is fully perſuaded, that what has paſſed at Berlin, has been occaſioned ſingly by the ill-grounded Informations which his Pruſſian Majeſty has received of theſe Affairs; and does not at all doubt, but that, when his Pruſſian Majeſty ſhall ſee them in their true Light, his natural Diſpoſition to Juſtice and Equity will induce him immediately to rectify the Steps which have been occaſioned by thoſe Informations, and to complete the Payment of the Debt charged on the Dutchy of Sileſia, according to his Engagements for that Purpoſe.

I am, with much Conſideration,

SIR,

Your moſt obedient,

Humble Servant,

HOLLES NEWCASTLE.

To the KING's Moſt Excellent MAJESTY.

May it pleaſe Your Majeſty,

In obedience to Your Majeſty's Commands, ſignified to us by his Grace the Duke of Newcaſtle, we have taken the Memorial, Sentence of the Pruſſian Commiſſioners, and Liſts marked A. and B. which were delivered to his Grace by Monſieur Michell, the Pruſſian Secretary here, on the 23d of November laſt, and alſo the printed *Expoſition des Motifs*, &c. which was delivered to his Grace the 13th of December laſt, into our ſerious Conſideration; and we have directed the proper Officer to ſearch the Regiſters of the Court of Admiralty, and inform us how the Matter appeared from the Proceedings there, in relation to the Caſes mentioned in the ſaid Liſts A. and B. which he has accordingly done.

And Your Majeſty having commanded us to report our Opinion concerning the Nature and Regularity of the Proceedings under the Pruſſian Commiſſion, mentioned in the ſaid Memorial, and of the Claim, or Demand, pretended to be

founded thereupon, and how far the ſame are conſiſtent with, or contrary to, the Law of Nations, and any Treaties ſubſiſting between Your Majeſty and the King of Pruſſia, the eſtabliſhed Rules of Admiralty Juriſdiction, and the Laws of this Kingdom:

For the greater Perſpicuity, we beg Leave to ſubmit our Thoughts upon the whole Matter in the following Method:

Firſt, To ſtate the clear eſtabliſhed Principles of Law.

Secondly, To ſtate the Fact.

Thirdly, To apply the Law to the Fact.

Fourthly, To obſerve upon the Queſtions, Rules, and Reaſonings alleged in the ſaid Memorial, Sentence of the Pruſſian Commiſſioners, and *Expoſition des Motifs*, &c. which carry the Appearance of Objections, to what we ſhall advance upon the former Heads.

Firſt, As to the Law.

When Two Powers are at War, they have a Right to make Prizes of the Ships, Goods, and Effects of each other, upon the High Seas: Whatever is the Property of the Enemy, may be acquired by Capture at Sea; but the Property of a Friend cannot be taken, provided he obſerves his Neutrality.

Hence the Law of Nations has eſtabliſhed,

That the Goods of an Enemy, on board the Ship of a Friend, may be taken.

That the lawful Goods of a Friend, on board the Ship of an Enemy, ought to be reſtored.

That contraband Goods, going to the Enemy, though the Property of a Friend, may be taken as Prize, becauſe ſupplying the Enemy with what enables him better to carry on the War, is a Departure from Neutrality.

By the Maritime Law of Nations, univerſally and immemorially received, there is an eſtabliſhed Method of Determination, whether the Capture be or be not lawful Prize.

Before

Before the Ship or Goods can be diſpoſed of by the Captor, there muſt be a regular judicial Proceeding, wherein both Parties may be heard, and Condemnation thereupon as Prize, in a Court of Admiralty, judging by the Law of Nations, and Treaties.

The proper and regular Court for theſe Condemnations, is the Court of that State to whom the Captor belongs.

The Evidence to acquit or condemn, with or without Coſts or Damages, muſt, in the Firſt Inſtance, come merely from the Ship taken, viz. the Papers on board, and the Examination, on Oath, of the Maſter, and other principal Officers; for which Purpoſe there are Officers of Admiralty in all the conſiderable Sea Ports of every Maritime Power at War, to examine the Captains, and other principal Officers of every Ship, brought in as Prize, upon general and impartial Interrogatories: if there do not appear from thence Ground to condemn, as Enemies Property, or contraband Goods going to the Enemy, there muſt be an Acquittal, unleſs, from the aforeſaid Evidence, the Property ſhall appear ſo doubtful, that it is reaſonable to go into further Proof thereof.

A Claim

A Claim of Ship, or Goods, muſt be ſupported by the Oath of ſomebody, at leaſt as to Belief.

The Law of Nations requires good Faith: Therefore every Ship muſt be provided with compleat and genuine Papers, and the Maſter, at leaſt, ſhould be privy to the Truth of the Tranſaction.

To enforce theſe Rules, if there be falſe or colourable Papers; if any Papers be thrown overboard; if the Maſter and Officers examined *in preparatorio* groſsly prevaricate; if proper Ship's Papers are not on board; or if the Maſter and Crew cannot ſay whether the Ship or Cargo be the Property of a Friend or Enemy; the Law of Nations allows, according to the different Degrees of Miſbehaviour or Suſpicion, ariſing from the Fault of the Ship taken, and other Circumſtances of the Caſe, Coſts to be paid, or not to be received, by the Claimant, in caſe of Acquittal and Reſtitution. On the other Hand, if a Seizure is made without probable Cauſe, the Captor is adjudged to pay Coſts and Damages; for which Purpoſe, all Privateers are obliged to give Security for their good Behaviour;

Behaviour; and this is referred to, and expreſsly ſtipulated by, many Treaties *.

Though from the Ship's Papers, and the Preparatory Examinations, the Property does not ſufficiently appear to be neutral, the Claimant is often indulged with Time, to ſend over Affidavits to ſupply that Defect: If he will not ſhew the Property, by ſufficient Affidavits, to be neutral, it is preſumed to belong to the Enemy. Where the Property appears from Evidence not on board the Ship, the Captor is juſtified in bringing her in, and excuſed paying Coſts, becauſe he is not in Fault; or, according to the Circumſtances of the Caſe, may be juſtly entitled to receive his Coſts.

If the Sentence of the Court of Admiralty is thought to be erroneous, there is in every Maritime Country a ſuperior Court of Review, conſiſting of the moſt conſiderable Perſons, to which the Parties who think themſelves aggrieved may

* Treaty between England and Holland, 17th Feb. 1668. Art. 13.—Treaty 1ſt Dec. 1674, Art. 10.—Treaty between England and France, at St. Germains, 24th Feb. 1677, Art. 10.—Treaty of Commerce at Ryſwick, Sept. 20, 1697, between France and Holland, Art. 30.—Treaty of Commerce at Utrecht, 31ſt March 1713, between Great Britain and France, Art. 29.

appeal;

appeal; and this ſuperior Court judges by the ſame Rule which governs the Court of Admiralty, viz. the Law of Nations, and the Treaties ſubſiſting with that neutral Power whoſe Subject is a Party before them.

If no Appeal is offered, it is an Acknowledgement of the Juſtice of the Sentence by the Parties themſelves, and concluſive.

This Manner of Trial and Adjudication is ſupported, alluded to, and enforced, by many Treaties *.

In

* As appears with reſpect to Courts of Admiralty adjudging the Prizes taken by thoſe of their own Nation, and with reſpect to the Witneſſes to be examined in thoſe Caſes, from the following Treaties:—Treaty between England and Holland, 17th Feb. 1668, Art. 9 and 14.—Treaty 1ſt Dec. 1674, Art. 11.—Treaty 29th April 1689, Art. 12, 13.—Treaty between England and Spain, 23d May 1667, Art. 23.—Treaty of Commerce at Ryſwick, 20th Sept. 1697, between France and Holland, Art. 26 and 31.—Treaty between England and France, 3d Nov. 1655, Art. 17 and 18.—Treaty of Commerce between England and France, at St. Germains, 29th March 1632, Art. 5 and 6.—Treaty at St. Germains, 24th Feb. 1677, Art. 7.—Treaty of Commerce between Great Britain and France, at Utrecht, 31ſt March 1713, Art. 26 and 30.—Treaty between England and Denmark, 29th Nov. 1669, Art. 23 and 34. Heineccius, who was Privy-counſellor to the King of Pruſſia, and held in the greateſt Eſteem, in his Treatiſe

In this Method all Captures at Sea were tried, during the laſt War, by Great Britain, France, and Spain, and ſubmitted to by the neutral Powers. In this Method, by Courts of Admiralty acting according to the Law of Nations and particular Treaties, all Captures at Sea have immemorially been judged of, in every Country of Europe: Any other Method of Trial would be manifeſtly unjuſt, abſurd, and impracticable.

Though the Law of Nations be the general Rule, yet it may, by mutual Agreement between Two Powers, be varied or departed from; and where there is an Alteration or Exception, introduced by particular Treaties, that is the Law between the Parties to the Treaty, and the Law of Nations only govern ſo far as it is not derogated from by the Treaty.

tiſe de Navibus ob vecturam vetitarum mercium commiſſis, cap. 2. § 17 and 18, ſpeaks of this Method of Trial.

With reſpect to Appeals, or Reviews:—From Treaty between England and Holland, 1ſt Dec. 1674, Art. 12, as it is explained by Art. 2, of the Treaty at Weſtminſter, 6th Feb. 1715-16.—Treaty between England and France, at St. Germains, 24th Feb. 1677, Art. 12.—Treaty of Commerce at Ryſwick, 20th Sept. 1697, between France and Holland, Art. 33.—Treaty of Commerce at Utrecht, 31ſt March 1713, between Great-Britain and France, Art. 31 and 32; and other Treaties.

Thus,

Thus, by the Law of Nations, where Two Powers are at War, all Ships are liable to be ſtopped, and examined to whom they belong, and whether they are carrying contraband Goods to the Enemy: But particular Treaties have enjoined a leſs Degree of Search, on the Faith of producing ſolemn Paſſports, and formal Evidences of Property, duly atteſted.

Particular Treaties too have inverted the Rule of the Law of Nations, and, by Agreement, declared the Goods of a Friend, on board the Ship of an Enemy, to be Prize; and the Goods of an Enemy, on board the Ship of a Friend, to be Free, as appears from the Treaties already mentioned, and many others *.

So likewiſe, by particular Treaties, ſome Goods reputed contraband by the Law of Nations, are declared to be free.

If a Subject of the King of Pruſſia is injured by, or has a Demand upon, any Perſon here, he ought to apply to Your Majeſty's Courts of Juſtice,

* Particularly by the aforeſaid Treaty between England and Holland, 1ſt Dec. 1674; and the Treaty of Utrecht between Great Britain and France.

which

which are equally open and indifferent to Foreigner or Native: So *vice versâ*, if a Subject here is wronged by a Perſon living in the Dominions of his Pruſſian Majeſty, he ought to apply for Redreſs in the King of Pruſſia's Courts of Juſtice.

If the Matter of Complaint be a Capture at Sea during War, and the Queſtion relative to Prize, he ought to apply to the Judicatures eſtabliſhed to try theſe Queſtions.

The Law of Nations, founded upon Juſtice, Equity, Convenience, and the Reaſon of the Thing, and confirmed by long Uſage, do not allow of Reprizals, except in caſe of violent Injuries, directed or ſupported by the State, and Juſtice abſolutely denied, in *re minime dubiâ*, by all the Tribunals and afterwards by the Prince *.

Where the Judges are left free, and give Sentence according to their Conſcience, though it

* Grotius de Jure Belli ac Pacis, lib. 3. cap. 2. § 4, 5.

Treaty between England and Holland, 31ſt July 1667, Art. 31. Reprizals ſhall not be granted till Juſtice has been demanded according to the ordinary Courſe of Law.

Treaty of Commerce at Ryſwick, 20th Sept. 1697, between France and Holland, Art. 4. Reprizals ſhall not be granted, but on manifeſt Denial of Juſtice.

ſhould

ſhould be erroneous, that would be no Ground for Reprizals. Upon doubtful Queſtions, different Men think and judge differently; and all a Friend can deſire is, that Juſtice ſhould be as impartially adminiſtered to him, as it is to the Subjects of that Prince in whoſe Courts the Matter is tried.

Secondly, as to the Fact.

We have ſubjoined hereto Two Liſts, tallying with thoſe marked A. and B. which were delivered to his Grace the Duke of Newcaſtle, by Monſ. Michell, with the ſaid Memorial, the 23d of November laſt, and are alſo printed at the End of the ſaid *Expoſition des Motifs*, &c. from whence it will appear, that as to the Liſt A. which contains Eighteen ſhips and their Cargoes,

4 If ever taken, were reſtored by the Captors themſelves, to the Satisfaction of the Pruſſians, who never have complained in any Court of Juſtice here.

1 Was reſtored by Sentence, with full Coſts and Damages, which were liquidated at 2801 l. 12 s. 1 d. Sterling.

3 Ships

3 Ships were reſtored by Sentence, with Freight, for ſuch of the Goods as manifeſtly belonged to the Enemy, and were condemned.

4 Ships were reſtored by Sentence, but the Cargoes, or Part of them, condemned as Prize, or contraband, and are not now alleged, in the Liſts A. or B., to have been Pruſſian Property.

5 Ships and Cargoes were reſtored by Sentence, but the Claimant ſubjected to pay Coſts, becauſe, from the Ship Papers, and Preparatory Examinations, there was Ground to have condemned, and the Reſtitution was decreed merely on the Faith of Affidavits afterwards allowed.

1 — 18 Ship and Cargo was reſtored by Sentence upon an Appeal, but, from the Circumſtances of the Capture, without Coſt on either Side.

There need no Obſervations upon this Liſt. As to the Eight Caſes firſt above-mentioned, there cannot be the Colour of Complaint.

As to the Four next, the Goods muſt be admitted to have been rightly condemned, either as Enemy's Property or contraband, for they are not now mentioned in the Liſts A or B.

If contraband, the Ship could have neither Freight nor Coſts, and the Sentences were favourable in reſtoring the Ships, upon Preſumption that the Owners of the Ships were not acquainted with the Nature of the Cargo, or Owners thereof. If Enemy's Property, the Ships could not be entitled to Freight, becauſe the Bills of Lading were falſe, and purported the Property to belong to Pruſſians.

The Ships could not be entitled to Coſts, becauſe the Cargoes, or Part of them, being lawful Prize, the Ships were rightly brought in.

As the Six remaining Ships and Cargoes were reſtored, the only Queſtion muſt be, upon the paying or not receiving Coſts, which depends upon the Circumſtances of the Capture, the Fairneſs of the Ship's Documents, and Conduct of her Crew; and neither the Pruſſian Commiſſioners, the ſaid Memorial, or ſaid *Expoſition des Motifs*, &c. allege a ſingle Reaſon why, upon the particular

Circumſtances of theſe Caſes, the Sentences were wrong.

As to the Liſt B.

Every Ship on board which the Subjects of Pruſſia claim to have had Property, was bound to, or from, a Port of the Enemy; and many of them appeared clearly to be, in Part, laden with the Goods of the Enemy, either under their own, or fictitious Names.

In every Inſtance where it is ſuggeſted that any Part of the Cargo belonged to a Pruſſian Subject, though his Property did not appear from the Ship's Papers, or Preparatory Examinations, which it ought to have done, ſufficient Time was indulged to that Pruſſian Subject, to make an Affidavit that the Property was *bonâ fide* in him; and the Affidavit of the Party himſelf has been received as Proof of the Property of the Pruſſian, ſo as to entitle him to Reſtitution.

Where the Party would not ſwear at all, or ſwears evaſively, it is plain he only lends his Name to cover the Enemy's Property, as often came out to be the Caſe, beyond the Poſſibility of Doubt.

It appears by a Letter $\frac{29\text{th May}}{9\text{th June}}$ 1747, from Monſ. Andrie, to his Pruſſian Majeſty, exhibited in a Cauſe, and certified to be a true Extract by Monſ. Michell, under his Hand, that this colourable Manner of ſcreening the Goods of the Enemy was ſtated in the following Words:

'Your Majeſty's Subjects ought not to load on 'board neutral Ships any Goods really belonging 'to the Enemies of England, but to load them 'for their own Account, whereby they may ſafely 'ſend them to any Country they ſhall think pro-'per, without running any Riſk: then, if priva-'teers commit any Damage to the Ships belonging 'to your Majeſty's Subjects, you may depend on 'full Juſtice being done here, as in all the like 'Caſes hath been done.'

Liſt B. contains thirty-three Caſes:

2 Two of them never came before a Court of Juſtice in England, but (if taken) were reſtored by the Captors themſelves, to the intire Satisfaction of the Owners.

16 In Sixteen of them, the Goods claimed by the Pruſſian Subjects appear to have been actually reſtored,

reſtored, by Sentence, to the Maſters of the Ships in which they were laden; and, by the Cuſtoms of the Sea, the Maſter is in the Place of the Lader, and anſwerable to him.

14 In Fourteen of the Caſes, the Pruſſian Property was not verified by the Ship's Papers, or Preparatory Examinations, or Claimant's own Affidavit, which he was allowed Time to make.

1 — 33 And the other Cauſe, with reſpect to Part of the Goods, is ſtill depending, neither Party having moved for Judgement *. And ſo conſcious were the Claimants that the Court of Admiralty did right, there is not an Appeal, in a ſingle Inſtance, in Liſt B. and but one in Liſt A.

Thirdly, To apply the Law to the Fact.

The Sixth Queſtion in the ſaid *Expoſition des Motifs*, &c. ſtates the Right of Reprizals to be, *puiſqu'on leur a ſi long tems dénié toute la Juſtice, qu'ils étoient fondés de demander.*

* The Pruſſian has ſince applied for Judgement, on the 29th of January, and obtained Reſtitution.

The ſaid Memorial founds the Juſtice and Propriety of his Pruſſian Majeſty's having recourſe to Reprizals, becauſe his Subjects, *n'ont pu obtenir juſqu'à preſent aucune Juſtice des Tribunaux Anglois qu'ils ont reclamès, ou du Gouvernment auquel ils ont porté leurs plaintes.* And in another Part of the Memorial it is put, *après avoir en vain demandé des Reparations de ceux qui ſeuls pouvoient les faire.*

The contrary of all which is manifeſt, from the above State, and Liſts hereto annexed.

In Six of the Caſes ſpecified (if ſuch Captures ever were made) the Pruſſian Subjects were ſo well ſatisfied with the Reſtitution made by the Captors, that they never complained in any Court whatſoever of this Kingdom.

The reſt were judged of by a Court of Admiralty, the only proper Court to decide of Captures at Sea, both with reſpect to the Reſtitution, and the Damages and Coſts, acting according to the Law of Nations, the only proper Rule to decide by; and Juſtice has been done by the Court of Admiralty ſo impartially, that all the Ships alleged in Liſt A. to have been Pruſſian, were reſtored; and

and all the Cargoes mentioned in either Liſt, A. or B. were reſtored, excepting Fifteen, One of which is ſtill undetermined.

And, in all the Caſes in both Liſts, Juſtice was done ſo entirely to the Conviction of the private Conſcience of the Pruſſian Claimants, that they have acquieſced under the Sentences, without appealing, except in one ſingle Inſtance, where the Part of the Sentence complained of was reverſed.

Though the Pruſſian Claimants muſt know, that, by the Law of Nations, they ought not to complain to their own Sovereign, till Injuſtice, *in re minime dubiâ*, was finally done them, paſt Redreſs; and though they muſt know that Rule of the Law of Nations held more ſtrongly upon this Occaſion, becauſe the Property of the Prize was given to the Captors, and ought, therefore, to be litigated with them. The Pruſſian who, by his own Acquieſcence, ſubmits to the Captors having the Prize, cannot afterwards, with Juſtice, make a Demand upon the State. If the Sentence was wrong, it is owing to the Fault of the Pruſſian that it was not redreſſed; but it is not attempted to be ſhewn even now, that theſe Sentences were unjuſt in any Part of them,

according to the Evidence and Circumſtances appearing before the Court of Admiralty, and that is the Criterion.

For as to the Pruſſian Commiſſion to examine theſe Caſes *ex parte*, upon new Suggeſtions, it never was attempted in any Country of the World before: Prize, or not Prize, muſt be determined by Courts of Admiralty belonging to the Power whoſe Subjects made the Capture: Every Foreign Prince in Amity has a Right to demand that Juſtice ſhall be done his Subjects in thoſe Courts, according to the Law of Nations, or particular Treaties, where any are ſubſiſting. If *in re minime dubiâ* theſe Courts proceed upon Foundations directly oppoſite to the Law of Nations or ſubſiſting Treaties, the neutral State has a Right to complain of ſuch Determination.

But there never was, nor ever can be, any other equitable Method of Trial. All the maritime Nations of Europe have, when at War, from the earlieſt Times, univerſally proceeded in this Way, with the Approbation of all the Powers at Peace. Nay, the Perſons acting under this extraordinary and unheard-of Commiſſion from his Pruſſian Majeſty,

Majeſty, do not pretend to ſay, that in the Four Caſes of Goods condemned here, for which Satisfaction is demanded in Liſt A. the Property really belonged to Pruſſian Subjects: But they profeſs to proceed upon this Principle, evidently falſe, that, though theſe Cargoes belonged to the Enemy, yet, being on board any neutral Ship, they were not liable to Enquiry, Seizure, or Condemnation.

Fourthly, From the Queſtions, Rules, Reaſonings, and Matters alleged in the ſaid Memorial, Sentence of the Pruſſian Commiſſioners, and *Expoſition des Motifs*, &c. the following Propoſitions may be drawn, as carrying the Appearance of Objections to what has been above laid down:

FIRST PROPOSITION.

That by the Law of Nations the Goods of an Enemy cannot be taken on board the Ship of a Friend; and this the Pruſſian Commiſſioners lay down as the Baſis of all they have pretended to do.

Anſwer. The contrary is too clear to admit of being diſputed: It may be proved by the Authorities of every Writer upon the Law of Nations; ſome

ſome of different Countries are referred to *. It may be proved by the conſtant Practice, ancient and modern; but the general Rule cannot be more ſtrongly proved, than by the Exception which particular Treaties have made to it †.

* Il Conſolato del Mare, Cap. 273. expreſsly ſays, The Enemy's Goods found on board a Friend's Ship, ſhall be confiſcated. And this is a Book of great Authority.

Grotius de Jure Belli ac Pacis. Lib. iii. Cap. 1. § 5. Numero 4, in the Notes, cites this Paſſage in the Il Conſolato, and in his Notes, Lib. iii. Cap. 6. § 6.

Loccenius de Jure Maritimo, Lib. ii. Cap. 4. § 12.

Voet de Jure Militari, Cap. 5. Nu. 21.

Heineccius, the learned Pruſſian before quoted, de Navibus ob Vecturam vetitarum Mercium Commiſſis, Cap. 2. § 9. is clear and explicit upon this Point.

Bynkerſhoeck Quæſtiones Juris Publici, Lib. i. Cap. 14. per Totum.

Zouch (an Engliſhman) in his Book de Judicio inter Gentes, Pars 2. § 8. Numero 6.

Treaty between Great Britain and Sweden, 23d Oct. 1661, Art. 12 and 13.—Treaty between Great Britain and Denmark, 29th Nov. 1669, Art. 2.—And the Paſſport, or Certificate, ſettled by that Treaty, are material as to this Point.

† Treaty between France and England, 24th Feb. 1677, Art. 8.—Treaty of Utrecht between France and England, 1713, Art. 17.—Treaty between England and Holland, 17th Feb. 1668, Art. 10.—Treaty between England and Holland, 1ſt Dec. 1674. Art. 8.—Treaty between England and Portugal, 10th July 1654, Art. 23.—Treaty between France and the States General at Utrecht, 11th April, 1713 Art, 26.

SECOND

SECOND PROPOSITION.

It is alleged that Lord Carteret, in 1744, by Two verbal Declarations, gave Aſſurances in Your Majeſty's Name, that nothing on board a Pruſſian Ship ſhould be ſeized, except contraband; conſequently, that all Effects not contraband, belonging to the Enemy, ſhould be free, and that theſe Aſſurances were afterwards confirmed in Writing, by Lord Cheſterfield, the 5th of January 1747.

Anſwer. The Fact makes this Queſtion not very material, becauſe there are but Four Inſtances, in Liſts A. or B. where any Goods on board a Pruſſian Ship have been condemned, and no Satiſfaction is pretended to be demanded for any of thoſe Four Cargoes in Liſts A. and B.: However, it may be proper to ſhew how groundleſs this Pretence is.

Taking the Words alleged to have been ſaid by Lord Carteret, as they are ſtated, they do not warrant the Inferences endeavoured to be drawn from them; they import no new Stipulation, different from the Law of Nations, but expreſsly profeſs

profeſs to treat the Pruſſians upon the ſame Foot with the Subjects of other neutral Powers under the like Circumſtances, i. e. with whom there was no particular Treaty; for the Reference to other neutral Powers cannot be underſtood to communicate the Terms of any particular Treaty. It is not ſo ſaid. The Treaties with Holland, Sweden, Ruſſia, Portugal, Denmark, &c. all differ. Who can ſay which was communicated? There would be no Reciprocity; the King of Pruſſia does not agree to be bound by the Clauſes to which other Powers have, by their reſpective Treaties, agreed. No Pruſſian Goods, on board an Enemy's Ship, have ever been condemned here; and yet they ought, if the Treaties with Holland were to be the Rule between Great Britain and Pruſſia; nay, if theſe Treaties were to be the Rule, all now contended for, on the Part of Pruſſia, is clearly wrong; becauſe by Treaty, the Dutch, in the laſt Reſort, are to apply to the Court of Appeal here.

Treaty of Alliance between Great Britain and Holland, at Weſtminſter, the 6th of February, 1715-16, Article 2.

'Whereas ſome Diſputes have happened, touching the Explanation of the Twelfth Article of the Treaty Marine in 1674, it is agreed and concluded, for deciding any Difficulty upon that Matter, to declare by theſe Preſents, that, by the Proviſions mentioned in the ſaid Article, are meant thoſe which are received by Cuſtom in Great Britain and in the United Provinces, and always have been received, and which have been granted, and always are granted, in the like Caſe, to the Inhabitants of the ſaid Countries, and to every Foreign Nation.'

Lord Carteret is ſaid twice to have refuſed, in which Monſ. Andrié acquieſces, to give any Thing in Writing, as not uſual in England.

Suppoſing the Converſations to mean no more than a Declaration of courſe, that Juſtice ſhould be done to the Pruſſians in like Manner as to any other neutral Power with whom there was no Treaty; there was no Occaſion for Inſtruments in

Writing, becauſe in England the Crown never interferes with the Courſe of Juſtice. No Order or Intimation is ever given to any Judge. Lord Carteret, therefore, knew that it was the Duty of the Court of Admiralty to do equal Juſtice, and that they would, of themſelves, do what he ſaid to Monſ. Andrié.

Had it been intended, by Agreement, to introduce between Pruſſia and England a Variation, in any Particular, from the Law of Nations, and, conſequently, a new Rule for the Court of Admiralty to decide by, it could only be done by a ſolemn Treaty, in Writing, properly authorized and authenticated; the Memory of it could not otherwiſe be preſerved; the Parties intereſted, and the Courts of Admiralty, could not otherwiſe take Notice of it.

But Lord Cheſterfield's Confirmation, in a Letter of the Fifth of January 1747, being relied upon, the Books of the Secretary's Office have been ſearched, and the Letter to Monſ. Michell is found, which is verbatim as follows:

Whitehall,

Whitehall, Jan. 5, 1747-8.

SIR,

Having had the Honour to receive the King's Orders upon the Subject of the Memorial, which you delivered to me on the 8th Inſtant N. S. I would not delay informing you, That His Majeſty, in order to omit nothing, whereby he may ſhew His Attention to the King your Maſter, makes no Difficulty in declaring that His Majeſty has never had, or will have, any Intention, to give any Interruption to the Navigation of the Pruſſian Subjects, as long as they ſhall take Care to carry on their Commerce in a lawful Manner, and conformable to the ancient Uſage as eſtabliſhed and acknowledged amongſt neutral Powers.

His Pruſſian Majeſty cannot be ignorant, that there are Treaties of Commerce actually ſubſiſting between Great Britain and certain neutral States, and that by Means of the Engagements formally contracted on each Side by thoſe Treaties, every Thing relating to the Manner of reciprocally carrying on their Commerce, has been finally ſettled and regulated.

As

At the ſame Time, it does not appear that any ſuch Treaty exiſts at preſent, or ever did exiſt, between His Majeſty and the King of Pruſſia: Nevertheleſs, that has never hindered the Pruſſian Subjects being favoured by England, with reſpect to their Navigation, as much as other neutral Nations; and His Majeſty does not ſuppoſe, that the King your Maſter means to require Diſtinctions from His Majeſty, much leſs any Preferences, in favour of His Subjects in this Point.

His Pruſſian Majeſty is too well informed not to know, that there are in this Government fixed and eſtabliſhed Laws, which cannot be departed from; and that in caſe any Engliſh Ships of War ſhould commit the leaſt Injuſtice to the trading Subjects of the King your Maſter, here is a Tribunal, viz. the High Court of Admiralty, where they have a Right to apply, and make their Complaints; and they may be previouſly aſſured, that, in ſuch Caſe, impartial Juſtice will be adminiſtered to them; the juridical Proceedings of the ſaid Court being, and having ever been, unimpeached and irreproachable, as appears by numerous Examples of neutral Veſſels illegally taken, having been reſtored, with Coſts and Damages, to the Proprietors.

This

This is the Anſwer the King has ordered me to give, upon the Contents of your ſaid Memorial; and His Majeſty cannot but flatter Himſelf that, in conſequence hereof, the King your Maſter's Deſire will be fully anſwered, with relation to the Point in Queſtion; and of which His Majeſty is the more aſſured, as he is perſuaded that the King of Pruſſia would not require any Thing but what is equitable.

I am,

With much Conſideration,

SIR,

Your moſt obedient,

and moſt humble Servant,

CHESTERFIELD.

There need no Obervations. It is explicit, and in expreſs Terms puts Pruſſia upon the Foot of other neutral Powers with whom there was no Treaty, and points out the proper Way of applying for Redreſs.

The verbal Declarations made by Lord Carteret in 1744, which are ſaid to have been confirmed

by this Letter from Lord Chesterfield, cannot have meant more than the Letter expresses.

And it is manifest, by the above Extract from Monf. Andrié's Letter to his Prussian Majesty, that in May 1747, Monf. Andrié himself understood, that Goods of the Enemy, taken on board neutral Ships, ought to be condemned as Prize.

It is evident, from authentic Acts, that the Subjects of Prussia never understood that any new Right was communicated to them.

Before the Year 1746, the Prussians do not appear to have openly engaged in covering the Enemy's Property.

The Men of War and Privateers could not abstain from Captures, in consequence of Lord Carteret's verbal Assurances in 1744, because they never were nor could be known; and there was no Occasion to notify them, supposing them only to promise impartial Justice. For all Ships of War were bound to act, and Courts of Admiralty to judge, according to the Law of Nations and Treaties.

Till

Till 1746, the Pruſſian Documents were, a Certificate of the Admiralty, upon the Oath of the Builder, that the Ship was Pruſſian built; and a Certificate of the Admiralty, upon the Oath of the Owner, that the Ship was Pruſſian Property.

From 1746, the Pruſſians engaged in the gainful Practice of covering the Enemy's Goods, but were at a Loſs in what Shape, and upon what Pretences, it might beſt be done.

On board the Ship Three Soeurs was found a Paſs, bearing Date at Stettin the 6th of October 1746, under the Royal Seal of the Pruſſian Regency of Pomerania, &c. alleging the Cargo, which was Ship Timber, bound for Port l'Orient, to be Pruſſian Property, and, in conſequence thereof, claiming Freedom of the Ship.

Claiming Freedom to the Ship, from the Property of the Cargo, being quite new, the Propoſition was afterwards reverſed; and on board a Ship called the Jumeaux was found a Paſs, bearing date at Stettin the 27th of June 1747, under the Royal Seal, &c. alleging the Ship to be Pruſ-

ſian Property, and, in conſequence thereof, claiming Freedom to the Goods.

But this Paſs was not ſolely relied on, for there was alſo found on board the ſame Ship another Paſs bearing date at Stettin the 14th of June 1747, under the Royal Seal, &c. alleging the Cargo to be Pruſſian Property.

And it is remarkable, that the Oaths upon which theſe Paſſes were granted, appeared manifeſtly to be falſe; and neither of the Cargoes to which they relate, are now ſo much as alleged to have been Pruſſian Property in the ſaid Liſts A. or B.

It being mentioned, in the ſaid *Expoſition des Motifs*, &c. that Monſ. Michell, in September 1747, made verbal Repreſentations to Lord Cheſterfield, in reſpect to the Cargo taken on board the ſaid Ship called the Three Soeurs, which was claimed as Pruſſian Property; and no mention being made in Liſts A. and B. of the ſaid Cargo, we directed the Proceedings in that Cauſe to be laid before us, where it appears in the fulleſt and cleareſt Manner, from the Ship Papers and Depoſitions,

ſitions, that the Cargo was Timber, laden on the Account and at the Riſque of Frenchmen, to whom it was to be delivered at Port l'Orient, they paying Freight according to Charter-party. That the Pruſſian Claimant was neither Freighter, Lader, or Conſignee; and had no other Intereſt or Concern in the Matter, than to lend his Name and Conſcience; for he ſwore that the Cargo was his Property, and laden on or before the 6th of October 1746; and yet the Ship was then in Ballaſt, and the Whole of the Cargo in Queſtion was not laden before May 1747.

Several other Pruſſian Claims had, in like Manner, come out ſo clearly to be merely colourable, that Monſ. Andrié, from his ſaid Letter, $\frac{29\text{ May}}{9\text{ June}}$ 1747, appears to have been aſhamed of them.

THIRD PROPOSITION.

That Lord Carteret, in his ſaid Two Converſations, ſpecified in your Majeſty's Name what Goods ſhould be deemed contraband.

Anſwer. The Fact makes this Queſtion totally immaterial, becauſe no Goods condemned as contraband, or which were alleged to be ſo, are ſo much

as now ſuggeſted to have been Pruſſian Property in the ſaid Liſts A. and B.; and, therefore, whether as Enemy's Property or contraband, they were either way rightly condemned; and the Bills of Lading being falſe, the Ships could not be entitled to Freight.

But, if the Queſtion was material, the verbal Declarations of a Miniſter in Converſation, might ſhew what he thought contraband by the Law of Nations; but never could be underſtood to be equivalent to a Treaty, derogating from that Law. All the Obſervations, upon the other Part of theſe verbal Declarations, hold equally as to this.

FOURTH PROPOSITION.

That the Britiſh Miniſters have ſaid, that theſe Queſtions were decided according to the Laws of England.

Anſwer. They muſt have been miſunderſtood, for the Law of England ſays, that all Captures at Sea as Prize, in Time of War, muſt be judged of in Court of Admiralty, according to the Law of Nations and particular Treaties, where there are any.

There

There never exiſted a Caſe, where a Court, judging according to the Laws of England only, ever took Cognizance of Prize.

The Property of Prizes being given during the laſt War to the Captors, your Majeſty could not arbitrarily releaſe the Capture, but left all Caſes to the Deciſion of the proper Courts, judging by the Law of Nations and Treaties where there were any; and it never was imagined, that the Property of a Foreign Subject, taken as Prize on the high Seas, could be affected by Laws peculiar to England.

FIFTH PROPOSITION.

That Your Majeſty could no more erect Tribunals for trying theſe Matters than the King of Pruſſia.

Anſwer. Each Crown has, no Doubt, an equal Right to erect Admiralty Courts, for the Trial of Prizes taken by virtue of their reſpective Commiſſions; but neither has a Right to try the Prizes taken by the other, or to reverſe the Sentences given by the other's Tribunal. The only regular Method of

rectifying their Errors, is by Appeal to the ſuperior Court.

This is the clear Law of Nations, and, by this Method, Prizes have always been determined, in every other Maritime Country of Europe, as well as England.

SIXTH PROPOSITION.

That the Sea is free.

Anſwer. They who maintain that Propoſition in its utmoſt Extent, do not diſpute but that when Two Powers are at War, they may ſeize the Effects of each other upon the high Seas, and on board the Ships of Friends: Therefore, that Controverſy is not in the leaſt applicable upon the preſent Occaſion *.

SEVENTH PROPOSITION.

Great Britain iſſued Repriſals againſt Spain, on account of Captures at Sea.

* This appears from Grotius in the Paſſages above cited, lib. 3. cap. 1. ſect. 5. no. 4. in his Notes. And lib. 3. cap. 6. ſect. 6. in his Notes.

Anſwer.

Anſwer. Theſe Captures were not made in Time of War with any Power.

They were not judged of by Courts of Admiralty, according to the Law of Nations and Treaties, but by Rules, which were themſelves complained of, in Revenue Courts: The Damages were afterwards admitted, liquidated at a certain Sum, and agreed to be paid by a Convention, which was not performed. Therefore Reprizals iſſued, but they were general. No Debts due here to Spaniards were ſtopped, no Spaniſh Effects here were ſeized. Which leads to one Obſervation more.

The King of Pruſſia has engaged his royal Word to pay the Sileſia Debt to private Men.

It is negotiable, and many Parts have been aſſigned to the Subjects of other Powers. It will not be eaſy to find an Inſtance, where a Prince has thought fit to make Repriſals upon a Debt, due from himſelf to private Men. There is a Confidence that this will not be done; a private Man lends Money to a Prince, upon the Faith of an Engagement of Honour, becauſe a Prince cannot be compelled, like other Men, in an adverſe Way by a Court of Juſtice. So ſcrupulouſly did England,

France, and Spain, adhere to this Publick Faith, that, even during the War, they ſuffered no Enquiry to be made, whether any Part of the Publick Debts was due to Subjects of the Enemy, though it is certain, many Engliſh had Money in the French Funds, and many French had Money in ours.

This Loan to the late Emperor of Germany, Charles the VI. in January 1734-5, was not a State Tranſaction, but a mere private Contract with the Lenders, who advanced their Money upon the Emperor's obliging himſelf, his Heirs and Poſterity, to repay the Principal with Intereſt, at the Rate, in the Manner, and at the Times in the Contract mentioned, without any Delay, Demur, Deduction, or Abatement whatſoever; and, leſt the Words and Inſtruments made uſe of ſhould not be ſtrong enough, he promiſes to ſecure the Performance of his Contract, in and by ſuch other Inſtruments, Method, Manner, Form, and Words, as ſhould be moſt effectual and valid, to bind the ſaid Emperor, his Heirs, Succeſſors, and Poſterity, or as the Lenders ſhould reaſonably deſire.

As a ſpecifick real Security, he mortgaged his Revenues, ariſing from the Dutchies of Upper and Lower

Lower Sileſia, for Payment of Principal and Intereſt; and the whole Debt, Principal and Intereſt, was to be diſcharged in the Year 1745. If the Money could not be paid out of the Revenues of Sileſia, the Emperor, his Heirs and Poſterity, ſtill remained Debtors, and were bound to pay. The Eviction or Deſtruction of a Thing mortgaged, do not extinguiſh the Debt, or diſcharge the Debtor.

Therefore the Empreſs Queen, without the Conſent of the Lenders, made it a Condition of her yielding the Dutchies of Sileſia to his Pruſſian Majeſty, that he ſhould ſtand in the Place of the late Emperor, in reſpect of this Debt.

The Seventh of the preliminary Articles, between the Queen of Hungary and the King of Pruſſia, ſigned at Breſlau, the 11th of June 1742, is in theſe Words: ‘ *Sa Majeſté le Roi de Pruſſe* ‘ *ſe charge du ſeul Payement de la Somme hypo-* ‘ *théquée ſur la Sileſie, aux Marchands Anglois,* ‘ *ſelon le Contract ſigné à Londres, le 7me de Janvier* ‘ 1734-5.’

This Stipulation is confirmed by the Ninth Article of the Treaty between their ſaid Majeſties, ſigned at Berlin, the 28th of July 1742.

Alſo

Alſo renewed and confirmed by the Second Article of the Treaty between their ſaid Majeſties, ſigned at Dreſden, the 25th of December 1745.

In Conſideration of the Empreſs Queen's Ceſſion, his Pruſſian Majeſty has engaged to her, that he will pay this Money, *ſelon le Contract*, and conſequently has bound himſelf to ſtand in the Place of the late Emperor, in reſpect of this Money, to all Intents and Purpoſes.

The late Emperor could not have ſeized this Money as Repriſals, or even in caſe of open War between the Two Nations, becauſe his Faith was engaged to pay it, without any Delay, Demur, Deduction, or Abatement whatſoever. If theſe Words ſhould not extend to all poſſible Caſes, he had plighted his Honour to bind himſelf, by any other Form of Words, more effectually to pay the Money; and therefore was liable at any Time to be called upon, to declare expreſsly, that it ſhould not be ſeized as Repriſals, or in caſe of War; which is very commonly expreſſed, when Sovereign Princes or States borrow Money from Foreigners. Therefore, ſuppoſing for a Moment that his Pruſſian Majeſty's Complaint was founded in Juſtice and the Law of Nations, and that he had a Right

to

to make Repriſals in general, he could not, conſiſtent with his Engagements to the Empreſs Queen, ſeize this Money as Repriſals. Beſides, this Whole Debt, according to the Contract, ought to have been diſcharged in 1745. It ſhould, in reſpect of the private Creditors, in Juſtice and Equity, be conſidered as if the Contract had been performed; and the Pruſſian Complaints do not begin till 1746, after the whole Debt ought to have been paid.

Upon this Principle of natural Juſtice, French Ships and Effects, wrongfully taken, after the Spaniſh War, and before the French War, have, during the Heat of the War with France, and ſince, been reſtored by Sentence of your Majeſty's Courts to the French Owners. No ſuch Ships or Effects ever were attempted to be confiſcated, as Enemies Property here, during the War; becauſe, had it not been for the Wrong firſt done, theſe Effects would not have been in Your Majeſty's Dominions. So, had not the Contract been firſt broke, by Non-payment of the Whole Loan in 1745, this Money would not have been in his Pruſſian Majeſty's Hands.

Your Majeſty's Guarantee of theſe Treaties is entire, and muſt therefore depend upon the ſame Conditions,

Conditions, upon which the Ceſſion was made by the Empreſs Queen.

But this Reaſoning is in ſome Meaſure ſuperfluous; becauſe, if the making any Repriſals upon this Occaſion be unjuſtifiable, which we apprehend we have ſhewn, then it is not diſputed, but that the Non-payment of this Money would be a Breach of his Pruſſian Majeſty's Engagements, and a Renunciation, on his Part, of thoſe Treaties.

All which is moſt humbly ſubmitted to your Majeſty's Royal Wiſdom.

GEO. LEE.
G. PAUL.
D. RYDER.
W. MURRAY.

January 18, 1753.

(No. 5.)

DECLARATION from the Empreſs of Ruſſia to the Courts of London, Verſailles, and Madrid, March 1780.

THE Empreſs of all the Ruſſias has ſo fully manifeſted the Sentiments of Juſtice, Equity, and Moderation, by which ſhe is animated, and has given ſuch evident Proofs, during the Courſe of the War that ſhe ſupported againſt the Ottoman Port, of the Regard ſhe has for the Rights of Neutrality and the Liberty of univerſal Commerce, as all Europe can witneſs. This Conduct, as well as the Principles of Impartiality that ſhe has diſplayed during the preſent War, juſtly inſpires her with the fulleſt Confidence, that her Subjects would peaceably enjoy the Fruits of their Induſtry and the Advantages belonging to a neutral Nation. Experience has nevertheleſs proved the contrary. Neither the above-mentioned Conſiderations, nor the Regard to the Rights of Nations, have prevented the Subjects of her Imperial Majeſty from being often moleſted in their Navigation, and ſtopped in their Operations, by thoſe of the belligerent Powers.

Theſe Hindrances to the Liberty of Trade in general, and to that of Ruſſia in particular, are of a Nature to excite the Attention of Sovereigns and of all neutral Nations. The Empreſs finds herſelf obliged therefore to free it by all the Means compatible with her Dignity and the Well-Being of her Subjects; but, before ſhe puts this into Execution, and with a ſincere Intention to prevent any future Infringements, ſhe thought it but juſt to publiſh to all Europe the Principles ſhe means to follow, which are the propereſt to prevent any Miſunderſtanding, or any Occurrences that may occaſion it. Her Imperial Majeſty does it with the more Confidence, as ſhe finds theſe Principles coincident with the primitive Right of Nations which every People may reclaim, and which the belligerent Powers cannot invalidate without violating the Laws of Neutrality, and without diſavowing the Maxims they have adopted in the different Treaties and publick Engagements.

They are reducible to the following Points:

Firſt, That all neutral Ships may freely navigate from Port to Port, and on the Coaſts of Nations at War.

Secondly,

Secondly, That the Effects belonging to the Subjects of the ſaid belligerent Powers ſhall be free in all neutral Veſſels, except contraband Merchandize.

Thirdly, That the Empreſs, as to the Specification of the above-mentioned Merchandize, holds to what is mentioned in the 10th and 11th Articles of her Treaty of Commerce with Great Britain, extending theſe Obligations to all the Powers at War.

Fourthly, That, to determine what characteriſes a Port blockaded; this is only to be underſtood of one which is ſo well kept by the Ships of the Power that attacks it, and which keep their Places, that it would be dangerous to enter it.

Fifthly, That theſe Principles ſerve as a Rule for Proceedings and Judgements upon the Legality of Prizes.

Her Imperial Majeſty, in making theſe Points public, does not heſitate to declare, that to maintain them, and to protect the Honour of her Flag, the Security of the Trade and Navigation of her Subjects, ſhe has prepared the greateſt Part of her maritime Forces. This Meaſure will not, however,

influence the ſtrict Neutrality ſhe has ſacredly obſerved, and will obſerve, ſo long as ſhe is not provoked and forced to break the Bounds of Moderation and perfect Impartiality. It is in this Extremity that her Fleet will have Orders to go wherever Honour, Intereſt, and Need may require.

In giving this ſolemn Aſſurance with the uſual Openneſs of her Character, the Empreſs cannot do other than promiſe herſelf that the belligerent Powers, convinced of the Sentiments of Juſtice and Equity which animate her, will contribute towards the Accompliſhment of her ſalutary Views, which manifeſtly tend to the Good of all Nations, and to the Advantage even of thoſe at War; that conſequently they will furniſh their Admiralties and commanding Officers with Inſtructions analogous and conformable to the above-mentioned Principles, founded upon the primitive Law of Nations, and ſo often adopted in their Conventions.

(No. 6.)

EXPLANATION which the Court of Sweden has demanded, relative to the Propoſal which the Court of Ruſſia has made for the reciprocal Protection and Navigation of their Subjects, April 1780.

I. HOW and in what Manner a reciprocal Protection and mutual Aſſiſtance ſhall be given.

II. Whether each particular Power ſhall be obliged to protect the general Commerce of all, or if in the mean Time it may employ a Part of its Armaments in the Protection of its own particular Commerce.

III. If ſeveral of theſe combined Squadrons ſhould meet, or, for Example, one or more of their Veſſels, what ſhall be the Rule of their Conduct towards each other, and how far ſhall the neutral Protection extend.

IV. It ſeems eſſential to agree upon the Manner in which Repreſentations ſhall be made to the

Powers at War, if, notwithſtanding our Meaſures, their Ships of War, or armed Veſſels, ſhould continue to interrupt our Commerce in any Manner. Muſt theſe Repreſentations be made in the general Name of the united Powers, or ſhall each particular Power plead its own Cauſe only?

V. Laſtly, it appears eſſentially neceſſary to provide againſt any poſſible Event, where one of the united Powers ſeeing itſelf driven to Extremities againſt any of the Powers actually at War, ſhould claim the Aſſiſtance of the Allies in this Convention to do her Juſtice; in what Manner can this be beſt concerted? A Circumſtance which equally requires a Stipulation, is, that the Repriſals in that Caſe ſhall not be at the Will of ſuch Party injured, but that the common Voice ſhall decide; otherwiſe an individual Power might at its Pleaſure draw the reſt againſt their Inclinations and Intereſts into diſagreeable Extremities, or break the whole League, and reduce Matters into their original State, which would render the Whole uſeleſs and of no Effect.

(No. 7.)

ANSWER of the Court of Ruſſia to the foregoing.

I. AS to the Manner in which Protection and mutual Aſſiſtance ſhall be granted, it muſt be ſettled by a formal Convention, to which all the neutral Powers will be invited, the principal Object of which is, to inſure a free Navigation to the Merchant Ships of all Nations. Whenever ſuch Veſſel ſhall have proved from its Papers that it carries no contraband Goods, the Protection of a Squadron, or Veſſels of War, ſhall be granted her, under whoſe Care ſhe ſhall put herſelf, and which ſhall prevent her being interrupted. From hence it follows:

II. That each Power muſt concur in the general Security of Commerce. In the mean Time, the better to accompliſh this Object, it will be neceſſary to ſettle, by means of a ſeparate Article, the Places and Diſtances which may be judged proper for the Station of each Power. From that Method will ariſe this Advantage, that all the Squadrons

of the Allies will form a Kind of Chain, and be able to aſſiſt each other; the particular Arrangement to be confined only to the Knowledge of the Allies, though the Convention in all other Points will be communicated to the Powers at War, accompanied with all the Proteſtations of a ſtrict Neutrality.

III. It is undoubtedly the Principle of a perfect Equality, which muſt regulate this Point. We ſhall follow the common Mode with regard to Safety. In caſe the Squadrons ſhould meet and engage, the Commanders will conform to the Uſages of the Sea Service, becauſe, as is obſerved above, the reciprocal Protection, under theſe Conditions, ſhould be unlimited.

IV. It ſeems expedient that the Repreſentations mentioned in this Article ſhould be made by the Party aggrieved; and that the Miniſters of the other Confederate Powers ſhould ſupport thoſe Remonſtrances in the moſt forcible and efficacious Manner.

V. We feel all the Importance of this Conſideration; and, to render it clear, it is neceſſary to diſtinguiſh the Caſe.

If

If any one of the Allied Powers ſhould ſuffer itſelf to be drawn in by Motives contrary to the eſtabliſhed Principles of a Neutrality and perfect Impartiality, ſhould injure its Laws, or extend its Limits, it cannot certainly be expected that the others ſhould eſpouſe his Quarrel; on the contrary, ſuch a Conduct would be deemed as abandoning the Ties which unite them. But if the Inſult offered to one of the Allies ſhould be hoſtile to the Principles adopted and announced in the Face of all Europe, or ſhould be marked with the Character of Hatred and Animoſity, inſpired by Reſentment of theſe common Meaſures of the Confederacy, which have no other Tendency than to eſtabliſh, in a preciſe and irrevocable Manner, Laws for the Liberty of Commerce, and the Rights of every Neutral Nation, then it ſhall be held as an indiſpenſable duty for the United Powers to make a common Cauſe of it (at Sea only) without its being a Baſis for other Operations, as theſe Connections are purely Maritime, having no other Object than Naval Commerce and Navigation.

From all that is ſaid above, it evidently reſults, that the common Will of all, founded upon the Principles admitted and adopted by the contracting Parties, muſt alone decide, and that it will always

be the fixed Baſis of the Conduct and Operations of this Union. Finally, we ſhall obſerve, that theſe Stipulations ſuppoſe no other naval Armament than what ſhall be conformable to Circumſtances, according as thoſe ſhall render them neceſſary, or as may be agreed. It is probable, that this Convention, once ratified and eſtabliſhed, will be of the greateſt Conſequence; and that the belligerent Powers will find in it ſufficient Motives to lead them to reſpect the Neutral Flag, and prevent their provoking the Reſentment of a reſpectable Confederacy, founded under the Auſpices of the moſt evident Juſtice, and the ſole Idea of which is received with the univerſal Applauſe of all impartial Europe.

(No. 8.)

ANSWER from the King of Spain, to the Declaration of the Empreſs of Ruſſia, April 18, 1780.

THE King has been informed of the Empreſs's Sentiments with reſpect to the belligerent and Neutral Powers, by a Memorial remitted to the Comte de Florida Blanca, on the 15th Inſtant, by Mr. Etienne de Zinowief, Miniſter to her Imperial Majeſty; the King conſiders this as the Effect of the juſt Confidence placed in him by her Majeſty; and it is yet more agreeable that the Principles adopted by this Sovereign ſhould be the ſame as have always guided the King, and which his Majeſty for a long Time, but without Succeſs, endeavoured to cauſe England to obſerve, while Spain remained neuter. Theſe Principles were thoſe of Juſtice, Equity, and Moderation; and theſe ſame Principles Ruſſia and all the other Powers have experienced in the Reſolutions formed by his Majeſty; and it has been entirely owing to the Conduct of the Engliſh Navy, both in the laſt and the preſent War, (a Conduct wholly

wholly ſubverſive of the received Rules among Neutral Powers), that his Majeſty has been obliged to follow their Example; ſince the Engliſh paying no reſpect to a Neutral Flag, if the ſame be laden with Effects belonging to the Enemy, even if the Articles ſhould not be contraband, and that Flag ſhould defend them, there could not be any juſt Cauſe why Spain ſhould not make Repriſals, to indemnify herſelf for the great Diſadvantages ſhe muſt otherwiſe labour under. The Neutral Powers, on their Side, have alſo laid themſelves open to the Inconveniencies they have ſuffered, by furniſhing themſelves with double Papers, and other Artifices, to prevent the Capture of their Veſſels; from which have followed Captures and Detentions innumerable and other diſagreeable Conſequences, though in reality not ſo prejudicial as pretended; on the contrary, ſome of theſe Detentions have turned to the Advantage of the Proprietors, as the Goods, being ſold in the Port where they were condemned, have frequently ſold at a higher Price than they would have done at the Place of their Deſtination.

The King nevertheleſs, not contented with theſe Proofs of his Equity, which have been manifeſt to all Europe, will once more have the Glory

of being the firſt to give the Example of reſpecting the Neutral Flag of all the Courts that have conſented, or ſhall conſent, to defend it, till his Majeſty finds what Part the Engliſh Navy takes, and whether they will, together with their Privateers, keep within proper Bounds. And to ſhow to all the Neutral Powers how deſirous Spain is of obſerving the ſame Rules in Time of War, as, when neuter, ſhe wiſhed others to obſerve, his Majeſty conforms to the other Points contained in the Declaration of Ruſſia. To be underſtood, nevertheleſs, that, with regard to the Blockade of Gibraltar, the Danger of entering ſubſiſts, as determined by the Fourth Article of the ſaid Declaration, by Means of the conſiderable Quantity of Veſſels ſtationed there, and which form the Blockade. Theſe Dangers may, however, be avoided by the Neutral Powers, if they conform to thoſe Rules of Precaution eſtabliſhed by his Majeſty's Declaration of the 13th of laſt March, which has been communicated to the Court of Peterſburg by his Miniſter.

FLORIDA BLANCA.

At Aranjuez, 18th April 1780.

(No. 9.)

ANSWER from the Court of Great Britain, to the Declaration of the Empreſs of Ruſſia; ſent to the Britiſh Envoy at Peterſburg, April 23, 1780.

DURING the Courſe of the War, wherein His Britannick Majeſty finds Himſelf engaged through the Aggreſſion of France and Spain, He hath conſtantly manifeſted His Sentiments of Juſtice, Equity, and Moderation, in every Part of His Conduct. His Majeſty hath acted towards friendly and neutral Powers according to their own Procedure reſpecting Great Britain, and conformable to the cleareſt Principles, generally acknowledged as the Law of Nations, being the only Law between Powers where no Treaties ſubſiſt, and agreeable to the Tenour of His different Engagements with other Powers; thoſe Engagements have altered this primitive Law, by mutual Stipulations, and have altered it in many different Manners, according to the Will and Convenience of the contracting Parties.

Strongly

Strongly attached to her Majeſty of all the Ruſſias, by the Ties of reciprocal Friendſhip and common Intereſt, the King, from the Commencement of theſe Troubles, gave the moſt preciſe Orders to reſpect the Flag of her Imperial Majeſty and the Commerce of her Subjects, agreeable to the Law of Nations, and the Tenour of the Engagements ſtipulated by His Treaty of Commerce with her, and to which He will adhere with the moſt ſcrupulous Exactneſs.

The Orders to this Intent have been renewed, and the utmoſt Care will be taken for their ſtricteſt Execution.

It is preſumed that thoſe Orders will prevent any Irregularities from happening; but in caſe any Infringements contrary to theſe repeated Orders ſhould take place, the Courts of Admiralty, which in this, like all other Countries, are eſtabliſhed to take Cognizance of ſuch Matters, and in all Caſes do judge ſolely by the Law of Nations, and by the ſpecifick Stipulations of different Treaties, will redreſs every Hardſhip in ſo equitable a Manner, that Her Imperial Majeſty cannot but be perfectly ſatisfied, and acknowledge the ſame Spirit of Juſtice which ſhe herſelf poſſeſſes.

(No. 10.)

ANSWER from the King of France to the Declaration of the Empreſs of Ruſſia, April 25, 1780.

THE War in which the King is engaged having no other Object than the Attachment of his Majeſty to the Freedom of the Seas, he could not but with the trueſt Satisfaction ſee the Empreſs of Ruſſia adopt the ſame Principle and reſolve to maintain it. That which her Imperial Majeſty claims from the belligerent Powers is no other than the Rules already preſcribed to the French Marine, the Execution of which is maintained with an Exactitude known and applauded by all Europe.

The Liberty of neutral Veſſels, reſtrained only in a few Caſes, is the direct Conſequence of Neutral Right, the Safeguard of Nations, and the Relief even of thoſe at War. The King has been deſirous, not only to procure a Freedom of Navigation to the Subjects of the Empreſs of Ruſſia, but to thoſe of all the States who maintain their Neutrality, and that upon the ſame Conditions as are announced

announced in the Declaration to which his Majeſty this Day anſwers.

His Majeſty thought he had taken a great Step for the general Good, and prepared a glorious Epocha for his Reign, by fixing, by his Example, the Rights which every belligerent Power may, and ought to acknowledge to be due to Neutral Veſſels. His Hopes have not been deceived, as the Empreſs, in avowing the ſtricteſt Neutrality, has declared in Favour of a Syſtem which the King is ſupporting at the Price of His People's Blood, and as her Majeſty claims the ſame Laws that he would wiſh to make the Baſis of the univerſal Maritime Code.

If freſh Orders were neceſſary to prevent the Veſſels of her Imperial Majeſty from being diſturbed in their Navigation by the Subjects of the King, his Majeſty would immediately give them; but the Empreſs will no doubt be ſatisfied with the Diſpoſitions made by his Majeſty in the Regulations he has publiſhed. They do not hold by Circumſtances only; they are founded on the Right of Nations, and are quite ſuitable to a Prince who finds the Happineſs of his own Kingdom in that of general Proſperity. The King

wiſhes

wiſhes her Imperial Majeſty would add to the Means ſhe has fixed upon to determine what Merchandizes are reckoned contraband in Time of War, preciſe Rules on the Form of the Sea-papers with which the Ruſſian Ships will be furniſhed.

With this Precaution, his Majeſty is aſſured nothing will happen to make him regret the having put the Ruſſian Navigators on as advantageous a footing as can be in Time of War. Circumſtances have more than once fortunately occurred to prove to the Courts how important it is for them to explain themſelves freely relative to their reſpective Intereſts.

His Majeſty is very happy to have explained his Way of thinking to her Imperial Majeſty upon ſo intereſting a Point for Ruſſia, and the trading Powers of Europe. He the more ſincerely applauds the Principles and Views of the Empreſs, as his Majeſty partakes of the ſame Sentiments which have brought her Majeſty to adopt thoſe Meaſures, which muſt be to the Advantage of her own Subjects, and all other Nations.

Verſailles, April 25, 1780.

(No. 11.)

CONVENTION concluded between Their Majeſties the Kings of Great Britain and Denmark, July 4, 1780, ſpecifying the ſeveral Articles which are comprehended under the Term, "*Contraband of War*," and explanatory of the Commercial Treaty of 1670.

HIS Majeſty the King of Denmark and Norway, and His Majeſty the King of Great Britain, animated with an equal Deſire to do away the Differences which the doubtful Interpretation of the Third Article of the Treaty of Alliance and Commerce concluded in 1670, between their Majeſties Chriſtian V. and Charles II. of glorious Memory, has occaſioned, and deſirous of preventing whatever might diſturb in future the ſincere and reciprocal Friendſhip that unites them, have agreed to ſubſtitute to the aforeſaid Article, an explanatory Article, conceived in the Manner and Tenour following:

The two contracting Sovereigns reciprocally bind themſelves and their Succeſſors, not to furniſh to the Enemies of either Party in Time of War, any Succour, neither Soldiers, nor Ships, nor any Effects and Merchandize ſtiled contraband; and in like Manner to forbid their Subjects to do it, and to puniſh ſeverely, and as Deſtroyers of the Peace, thoſe who ſhould dare to act contrary to their Prohibitions in this Reſpect: But, in order to leave no Doubt upon what is to be underſtood by the Term Contraband, it is agreed, that this Denomination is meant only to comprehend Fire Arms, and Weapons of other Kinds, with their Accoutrements, as Canon, Muſkets, Mortars, Petards, Bombs, Grenades, Stink Pots, Sauciſſes, Carriages, Gun Belts, Crow's Feet, Powder, Matches, Saltpetre, Balls, Pikes, Swords, Helmets, Cuiraſſes, Halberds, Lances, Javelins, Horſes, Saddles, Piſtol Holſters, Shoulder Belts, and generally all other warlike Accoutrements; alſo, Ship Timber, Tar, Pitch, and Roſin, Sheet Copper, Sails, Hemp, and Cordage, and, generally, whatever immediately ſerves for the Equipment of Ships; unwrought Iron and Deal Planks, however excepted.

But it is expreſsly declared, that this Kind of contraband Merchandize ſhall by no means comprehend Fiſh and Fleſh, freſh or ſalted; Wheat, Flour, Corn or other Grain; Garden Stuff, Oil, Wine, and generally whatever ſerves for the Nouriſhment and Support of Life; ſo, that all theſe Articles may always be conveyed and tranſported like other Merchandize, even to Places in the Poſſeſſion of an Enemy of the Two Crowns, provided that ſuch Places are neither beſieged or blockaded.

And their Majeſties being deſirous that this Article, as it is actually ſettled, ſhould hold preciſely the Place of that for which it is ſubſtituted, ſo that it ſhall have the ſame Effect and Validity as if it were inſerted Word for Word in the ſaid Treaty; and that it ſhould be conſidered as authentic and obligatory as the Treaty itſelf; they have agreed that it ſhould be ſo declared and decreed by a Declaration ſigned by the Miniſter for Foreign Affairs.

For which Purpoſe, his Daniſh Majeſty has authorized and furniſhed the Underſigned with his full Powers, and in virtue of which, I have exe-

cuted this present Act, serving as a Declaration to fix the Third Article of the Treaty of 1670 in the Manner in which it is found written and inserted in this Act, signed with my Hand.

Done at Copenhagen, the 4th of July 1780.

(L. S.) A. Bernstorff.

(No. 12.)

DECLARATION of the King of Denmark and Norway, to the Courts of London, Verſailles, and Madrid, July 8, 1780.

IF the moſt exact and perfect Neutrality, with the moſt regular Navigation, and the moſt inviolable Reſpect to Treaties, could have kept free the Commerce of the Subjects of the King of Denmark and Norway from the Inroads of the Powers with whom he is at Peace free and independent, it would not be neceſſary to take freſh Meaſures to inſure to his Subjects that Liberty to which they have the moſt incontrovertible Right. The King of Denmark has always founded his Glory and his Grandeur upon the Eſteem and Confidence of other People. It has been his Rule, from the Beginning of his Reign, to teſtify to all the Powers, his Friends, a Conduct the moſt capable of convincing them of his pacific Intentions, and of his Deſire to contribute to the general Happineſs of Europe. His Proceedings have always been conformable to theſe Principles, againſt which nothing can be alledged; he has not, till now, addreſſed

himſelf but to the Powers at War themſelves, to obtain a Redreſs of his Griefs; and he has never wanted Moderation in his Demands, nor Acknowledgments when they have received the Succeſs they deſerved: but the Neutral Navigation has been too often moleſted, and the moſt innocent Commerce of his Subjects too frequently troubled; ſo that the King finds himſelf obliged to take proper Meaſures to aſſure to himſelf and his Allies the Safety of Commerce and Navigation and the Maintenance of the inſeparable Rights of Liberty and Independence. If the Duties of Neutrality are ſacred, the Law of Nations has alſo its Rights avowed by all impartial Powers, eſtabliſhed by Cuſtom, and founded upon Equity and Reaſon. A Nation independent and neuter does not loſe by the War of others the Rights which ſhe had before the War, becauſe Peace exiſts between her and all the belligerent Powers. Without receiving or being obliged to follow the Laws of either of them, ſhe is allowed to follow in all Places (Contraband excepted) the Traffick which ſhe would have a Right to do if Peace exiſted with all Europe as it exiſts with her. The King pretends to nothing beyond what the Neutrality allows him. This is his Rule, and that of his People; and the King cannot accord to the Principle that a Power

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at War has a Right to interrupt the Commerce of his Subjects. He thinks it due to himself, and his Subjects, faithful Observers of these Rules, and to the Powers at War themselves, to declare to them the following Principles, which he has always held, and which he will always avow and maintain, in Concert with the Empress of all the Russias, whose Sentiments he finds entirely conformable with his own.

I. That Neutral Vessels have a Right to navigate freely from Port to Port, and on the Coasts of the Powers at War.

II. That the Effects of the Subjects of the Powers at War shall be free in Neutral Vessels, except such as are deemed contraband.

III. That nothing is to be understood under the Denominations of contraband, that is not expressly mentioned as such in the Third Article of his Treaty of Commerce with Great Britain, in the Year 1670, and the 26th and 27th Articles of his Treaty of Commerce with France, in the Year 1742; and the King will equally avow these Rules with those Powers with whom he has no Treaty.

IV. That he will look upon as a Port blocked up, into which no Veſſel can enter without evident Danger, on account of Veſſels of War ſtationed there, to form a cloſe and effectual Blockade.

V. That theſe Principles ſerve for Rules in Procedure, and that Juſtice ſhall be expeditiouſly rendered, after the Rules of the Sea, conformably to Treaty and Uſage received.

VI. His Majeſty does not heſitate to declare, that he will maintain theſe Principles as well as the Honour of his Flag, and the Liberty and Independence of the Commerce and Navigation of his Subjects; and that it is for this Purpoſe he has armed a Part of his Fleet, although he is deſirous to preſerve, with all the Powers at War, not only a good Underſtanding, but all the Friendſhip which the Neutrality can admit of. The King will never recede from theſe Principles, unleſs he is forced to it: he knows the Duties and the Obligations, he reſpects them as he does his Treaties, and deſires no other than to maintain them. His Majeſty is perſuaded, that the belligerent Powers will acknowledge the Juſtice of his Motives; that they will be as averſe as himſelf to doing any Thing that may oppreſs the natural Liberties of Mankind, and that they will give their Orders

Orders to their Admiralty and to their Officers, conformably to the Principles above recited, which evidently tend to the general Happineſs and Intereſt of all Europe.

Copenhagen, July 8, 1780.

(No. 13.)

CONVENTION for an Armed Neutrality, concluded at Copenhagen, June 28, 1780, O. S. between her Majeſty the Empreſs of Ruſſia, and his Majeſty the King of Denmark and Norway, for the Preſervation of the Liberty of the Commerce and Navigation of Neutral Nations; to which his Majeſty the King of Sweden, and their High Mightineſſes the States General of the United Provinces, have acceded, and reſpectively ſigned the ſame at Peterſburg, on the 21ſt of July 1780, and the 5th of January 1781.

THE preſent maritime War, kindled between Great Britain on the one Hand, and France and Spain on the other Hand, having been very prejudicial to the Commerce and to the Navigation of neutral Nations, her Imperial Majeſty of all the Ruſſias, and his Majeſty the King of Denmark and Norway, always attentive to conciliate their Dignity, and their Care for the Safety and Welfare of their Subjects, with the Regard which

they

they have ſo often manifeſted for the Rights of Nations in general, have found it neceſſary, in their Situation, to regulate, under the preſent Circumſtances, their Conduct by theſe Sentiments.

Her Imperial Majeſty of all the Ruſſias, by Means of her Declaration to the Powers actually engaged in War, dated 28th February 1780, has avowed, in the Face of all Europe, the Principles derived from the primitive Rights of Nations, which her ſaid Majeſty claims, and has adopted as the Rule of her Conduct during the preſent War.

This Attention of her Imperial Majeſty, in watching over the Maintenance of the common Rights of Nations, having been applauded by all neutral Nations, has re-united them in a Cauſe which concerns the Defence of their deareſt Intereſts, and has induced them to employ themſelves on an Object material both in the preſent and future Times, in ſo far as it reſpects the forming and re-uniting, in a permanent and invariable Syſtem, the prerogative Rights, Limits, and Engagements of Neutrality. His Majeſty the King of Denmark and Norway, convinced of the Juſtice of theſe Principles,

Principles, has likewiſe eſtabliſhed and claimed them in the Declaration which he cauſed to be tranſmitted on the 8th of July 1780, to the Three belligerent Powers, in Conformity to that of Ruſſia, and for the Support of which, his Daniſh Majeſty has even ordered a conſiderable Part of his Fleet to be equipped. From thence have ariſen that Harmony and Unanimity with which her Imperial Majeſty of all the Ruſſias, and his Majeſty the King of Denmark and Norway, in conſequence of their mutual Friendſhip and Confidence, as well as of the Conformity of the Intereſts of their Subjects, have judged proper to give, by Means of a formal Convention, a ſolemn Sanction to the mutual Engagements about to be entered into.

To this Effect their ſaid Majeſties have choſen and appointed, for their Plenipotentiaries, *viz.* her Imperial Majeſty of all the Ruſſias, the Sieur Charles Oſten, ſurnamed Sacken, actual Counſellor of State, Knight of the Order of St. Ann, Envoy Extraordinary, and Miniſter Plenipotentiary from her ſaid Majeſty to the Court of Denmark; and his Majeſty the King of Denmark and Norway, the Sieur Otto Count of Thott, Privy Counſellor of his Council, Knight

of

of the Order of the Elephant, &c. the Sieur Joachim Otto de Schack-Rathlow, Privy Counſellor of his Council, Knight of the Order of the Elephant, &c. the Sieur John Henry D'Eickſtedt, Privy Counſellor of his Council, Governor of his Royal Highneſs the Prince Royal, Knight of the Order of the Elephant, &c. and the Sieur Andrew Peter Count Bernſtorff, Privy Counſellor of his Council, Secretary of State for the Department of Foreign Affairs, Director of the German Chancery, Knight of the Order of the Elephant, &c. who, after having reſpectively exchanged their full Powers, found to be in good and due Form, have concluded and agreed to the following Articles:

I. Their ſaid Majeſties having ſincerely reſolved to maintain conſtantly the moſt perfect Harmony and Friendſhip with the Powers actually engaged in War, and to continue to obſerve the moſt ſtrict and exact Neutrality, declare that they will enforce the moſt rigorous Execution of the Prohibition againſt the Contraband Commerce of their Subjects, with any Powers whatſoever at preſent engaged in War, or who may hereafter be engaged therein.

II. To avoid all Ambiguities and Misunderstandings with regard to Commodities which shall be deemed Contraband, her Majesty the Empress of Russia, and his Majesty the King of Denmark and Norway, do hereby declare, that they shall only acknowledge such Articles to be Contraband Commodities as are included and mentioned as such in the Treaties now subsisting between their respective Courts and the one or the other of the belligerent Powers.

Her Majesty the Empress of Russia conforms herself entirely in this Respect to the Articles X. and XII. of her Treaty of Commerce with the Court of Great Britain, and extends likewise the Engagements of this Treaty, which are founded upon the natural Rights of Nations, to the Courts of France and Spain; which said Courts have not, as yet, been connected with her Empire by any formal Engagement relating solely to Commerce.

His Majesty the King of Denmark and Norway, on his Part, conforms himself chiefly to the IId. Article of this Treaty of Commerce with the Court of Great Britain, and to the Articles XXVI. and XXVII. of his Treaty of Commerce with France, and extends also the Engagements of this last-mentioned

tioned Treaty to the Court of Spain, as his ſaid Majeſty has no Treaty with the laſt mentioned Power, which determines any Conditions relative to this Subject.

III. As contraband Goods are defined, and are excluded from the Commerce of neutral Nations, conformably to the Treaties and expreſs Stipulations ſubſiſting between the high contracting Parties and belligerent Powers, and expreſsly in virtue of the Treaty of Commerce concluded between Ruſſia and Great Britain, the 11th July 1670, and of that concluded between Denmark and France, the 23d of Auguſt 1742, it is the Will and Intention of her Imperial Majeſty of all the Ruſſias, and of his Majeſty the King of Denmark and Norway, that all other Commerce ſhall be and remain free. Their Majeſties, after having already claimed in their Declarations to the belligerent Powers, the general Principles of natural Right, of which the Liberty of Commerce and Navigation, as well as the Rights of neutral Nations, are a direct Conſequence, have reſolved not to let them any longer depend on an arbitrary Interpretation ſuggeſted by independent and momentary Intereſts; with this View they have agreed,

1. That

1. That all Veſſels ſhall be permitted to navigate from Port to Port, and on the Coaſts of the belligerent Powers.

2. That the Effects belonging to Subjects of the belligerent Powers ſhall be free on board neutral Ships and Veſſels, excepting only ſuch Articles as are contraband.

3. In order to determine what is to be conſidered as a blockaded Port, it is hereby declared, that Port ſhall only be deemed as ſuch into which no Ships can enter without being expoſed to an evident Peril from the Forces that attack the ſaid Port, and the Ships that ſhall have taken a Station near enough for that Purpoſe.

4. That neutral Veſſels ſhall only be detained for juſt Cauſes and evident Facts; that Juſtice ſhall be adminiſtered to them without Delay; that the Proceedings ſhall always be uniform, ſpeedy, and legal; and that, in addition to the Compenſations granted to thoſe who may have unjuſtly ſuffered Loſſes, complete Satisfaction ſhall always be made for the Inſult done to their Majeſties Flags.

IV. In

IV. In order to protect the Commerce of their Majeſties, founded on the Principles above laid down, her Imperial Majeſty of all the Ruſſias, and his Majeſty the King of Denmark and Norway, have judged proper to equip, ſeparately, a Number of Ships of War and Frigates proportionate to this End; the Squadrons of each Power being to take that Station, and to be employed in thoſe Convoys which the Commerce and Navigation of each Nation may require, conformably to the Nature and Quality of its Traffick.

V. If notwithſtanding, it ſhould happen that the Merchant Veſſels of one of the Powers ſhould be in a Latitude where no Ships of War of the ſame Nation were ſtationed, and where they could not have recourſe to their own Convoys, then the Commander of the Ships of War of the other Power, if he be requeſted to do ſo, ought, in good Faith, and ſincerely, to afford them the Aſſiſtance of which they may be in need; and in ſuch a Caſe, the Ships of War and Frigates of the one Power ſhall grant Protection and Aſſiſtance to the Merchant Veſſels of the other; provided that theſe ſhall not have carried on any illicit Trade, or any Trade contrary to the Principles of Neutrality.

VI. This Convention ſhall have no retroactive Effect, and conſequently no Part will be taken in the Differences which may have ariſen before its Concluſion, unleſs they relate to Acts of Violence continued, and tending to eſtabliſh a Syſtem oppreſſive to all the neutral Nations of Europe in general.

VII. If, notwithſtanding the moſt attentive and moſt amicable Care of the Two Powers, and notwithſtanding the moſt perfect Obſervation of the Neutrality on their Part, any Daniſh or Ruſſian Merchant Ships ſhould happen to be inſulted, pillaged, or taken by the Ships of War or Privateers of any belligerent Power, then the Miniſter of the offended Party to that Court whoſe Ships of War or Privateers may have committed ſuch Outrage, ſhall make to that Court Repreſentations, ſhall claim the Merchant Ships ſo ſeized, and ſhall inſiſt upon proper Compenſation, never loſing Sight of the Satisfaction due for the Inſult offered to the Flag. The Miniſter of the other contracting Party ſhall join him and ſupport his Complaints in the moſt energetic and moſt efficacious Manner, and thus they ſhall act with a common and perfect Harmony. If Juſtice ſhould be refuſed to theſe Complaints,

or

or if it ſhould be delayed from Time to Time, then their Majeſties ſhall uſe Repriſals towards the Power refuſing to do them Juſtice, and they will immediately concert together the moſt efficacious Means of executing theſe juſt Repriſals.

VIII. In caſe that one or other of the high contracting Parties, or both together, ſhould be diſturbed, moleſted, or attacked, in conſequence of this Convention, or on any Subject whatever relative thereto, it is hereby ſtipulated and agreed, that the Two Powers ſhall immediately act in concert for their mutual and reciprocal Defence, and ſhall employ and unite all their Forces to obtain a proper Satisfaction, as well for the Inſult offered to their Flag, as for the Loſſes ſuſtained by their reſpective Subjects.

IX. This Convention determined upon and concluded for as long as the preſent War ſhall laſt, ſhall ſerve as the Baſis for all Engagements which Conjunctures may render neceſſary to contract for the Future, and on account of any new maritime War by which Europe may unfortunately be troubled. As for the reſt, theſe Stipulations ſhall be conſidered as permanent, and ſerve as a Law in Matters of Commerce and Navigation, whenever

there ſhall be Queſtion of appreciating the Rights of neutral Nations.

X. As the End and principal Object of this Convention is to aſſure the general Liberty of Commerce and Navigation, her Imperial Majeſty of all the Ruſſias, and his Majeſty the King of Denmark and Norway, agree and bind themſelves before-hand to conſent, that other Powers equally neutral may accede thereto; and that in adopting the Principles of it, they may partake of the Obligations, as well as of the Advantages of it.

XI. In order that the belligerent Powers may not have the Pretext of Ignorance with regard to the Arrangements taken between their ſaid Majeſties, the Two high contracting Parties ſhall amicably communicate to all the belligerent Powers the Meaſures which they have concerted together; Meaſures ſo much the leſs hoſtile, as they are not detrimental to any other Power, but tend excluſively to the Safety of the Commerce and Navigation of their reſpective Subjects.

XII. The preſent Convention ſhall be ratified by the Two contracting Parties, and the Ratifications ſhall

ſhall be exchanged in good and due Form, in the Space of Six Weeks, reckoning from the Date of its Signature, or ſooner if it can be done. In Witneſs whereof, we, the Underſigned, by virtue of our full Powers, have ſigned it, and have affixed to it the Seals of our Arms.

Done at Copenhagen, the 9th Day of the Month of July, in the Year of our Lord 1780.

(L. S.) Chas d'Osten, ſurnamed Sacken.
(L. S.) O. Thott.
(L. S.) J. Schack Rathlow.
(L. S.) J. Eickstedt.
(L. S.) A. P. Bernstorf.

(No. 14.)

SEPARATE Articles added to the Maritime Convention between Ruſſia and Denmark of the $\frac{2}{9}\frac{8}{9}$ June July 1780.

I.

HER Imperial Majeſty of all the Ruſſias, and his Majeſty the King of Denmark and Norway, being always equally intereſted to watch over the Security and Tranquillity of the Baltick, and to protect it from the Troubles of War and the Incurſions of Privateers; a Syſtem ſo much the more juſt and natural, as all the Powers whoſe Territories ſurround it enjoy the moſt profound Peace; they have mutually agreed to perſevere in maintaining that it is a cloſe Sea, incontrovertibly ſo from its Situation, wherein all Nations ought and may navigate in Peace, and enjoy all the Advantages of a perfect Tranquillity; and have for that Purpoſe mutually taken Meaſures capable of guaranteeing the ſaid Sea and its Coaſts from all Hoſtilities, Piracies, and Violences. They will likewiſe maintain within their own Diſtricts the Tranquillity of the North Sea as much as Cir-

cumſtances and the Intereſts of their Dominions ſhall require.

II. Their ſaid Majeſties deſiring nothing more ardently than the Re-eſtabliſhment of Peace upon equitable Principles, Sentiments which the Love of Humanity, and the Deſire to prevent a greater Effuſion of Blood, have inſpired them with from the very Beginning of the Diſſenſions which divide Europe, reciprocally promiſe each other that they will apply themſelves to this particular Object, adviſe on the Means calculated to produce this Effect, and whenever an Opportunity ſhall preſent itſelf, will embrace it, and co-operate with Sentiments of Friendſhip and Confidence in ſo ſalutary a Work.

III. Local Situation rendering the Period very ſhort during which the Fleets of her Imperial Majeſty can act out of the Baltick for the Security of Neutral Commerce in other Seas; his Majeſty the King of Denmark and Norway engages to receive into his Ports, and to treat preciſely on the ſame Footing as his own Ships, every Ruſſian Ship or Veſſel that may enter them to winter there; to cauſe them to be ſupplied from his Magazines with

Stores and Proviſions of every Deſcription of which the Crews may ſtand in Need, at the ſame Prices at which his Majeſty's Ships are furniſhed: In a Word, to make the neceſſary Arrangements that the ſaid Ships and their Crews may be properly taken Care of.

IV. That, ſhould the Junction of the Squadrons be found neceſſary, in ſuch Caſe, Meaſures ſhall be adopted in conformity with the Principles of a perfect Equality; and whenever One or ſeveral Ships ſhall be together, the Officer of higheſt Rank amongſt them, or, in caſe they ſhall be all of equal Rank, the oldeſt Officer ſhall take the Command of the Ships of War and Frigates of the Two Nations.

V. At the Period more or leſs diſtant of Peace between the belligerent Powers, her Imperial Majeſty of all the Ruſſias, and his Majeſty the King of Denmark and Norway, will employ themſelves in the moſt efficacious Manner, with the Maritime Powers in general, to cauſe to be received and univerſally acknowledged, in all Maritime Wars which may in the Courſe of Time ariſe, the Syſtem of Neutrality, and the Principles eſtabliſhed in the preſent

ſent Convention, as forming the Baſis of a general Maritime Code.

VI. As ſoon as this Convention ſhall be ratified, and the Exchange thereof made, the high contracting Parties ſhall take Care to communicate it, with the Exception of the ſeparate Articles, conjointly and faithfully, and by common Conſent, through their Miniſters accredited to Foreign Courts, and eſpecially to thoſe who are actually at War. In order to act with perfect Uniformity in this reſpect, the Formula of the Act which the reſpective Miniſters are to preſent on this Occaſion is hereunto annexed.

Theſe ſeparate Articles ſhall be conſidered and held as making Part of the Convention itſelf, and ſhall have the ſame Force and Validity, as if they were inſerted Word for Word in the ſaid Convention concluded the ſame Day between the Two high contracting Parties. They ſhall be ratified in the ſame Manner, and the Ratifications exchanged at the ſame Time.

In Witneſs whereof, we the Underſigned, in virtue of our full Powers, have ſigned them, and affixed thereunto the Seals of our Arms.

Done at Copenhagen the 9th Day of the Month of July, in the Year of our Lord One thouſand ſeven hundred and eighty.

(L. S.) CHARLES D'OSTEN, ſurnamed SACKEN.
(L. S.) P. C. BERNSTORFF.
(L. S.) O. THOTT.
(L. S.) O. SCHACK RATHLOW.
(L. S.) J. H. EICKSTEDT.

In fidem Concordantiæ,
PIERRE DE BACUNIN.

THE Ratifications of this Convention have been exchanged at Copenhagen, on the 16th of September 1780, by the ſame Miniſters Plenipotentiaries who have ſigned the ſame.

And as a like Convention has been concluded at Peterſburg, between the Miniſters choſen and appointed to that Effect, namely, on the Part of her Majeſty the Empreſs of Ruſſia, Count Nikita Panin, Privy Counſellor, Miniſter and Secretary of State, Knight of the Orders of St. Andrew, St. Alexander-Newſky, and St. Ann; and Count J. Oſterman,

man, Vice Chancellor of Ruſſia, Privy Counſellor of State, and Knight of the Orders of St. Alexander-Newſky, and St. Ann; and on the Part of his Majeſty the King of Sweden, Baron Frederick Van Nolken, Envoy Extraordinary from his Swediſh Majeſty to the Court of Peterſburg, Chamberlain, Commander of the Order of the Polar Star, and Knight of the Orders of the Sword and St. John, &c. which ſaid Convention has been ſigned at Peterſburg by the above-named Plenipotentiaries, after the cuſtomary Exchange of their full Powers in due Form, on the 21ſt of July 1780; and the ſaid Convention being Word for Word of the ſame Tenor and Form as that concluded and ſigned at Copenhagen, excepting only the ſecond Article, in which the Stipulations concerning the Articles that are to be deemed contraband are determined and aſcertained according to the Treaties ſubſiſting between the Court of Sweden and other Powers, it has been thought proper, to avoid a Repetition of what has already been mentioned, to inſert here the Second Article only, Word for Word, the ſame as it ſtands in the Treaty concluded and ſigned at Peterſburg, July 21, 1780, between their Majeſties the Empreſs of Ruſſia and the King of Sweden.

Article

Article II. To avoid all Errors and Misunderſtandings with regard to Commodities which ſhall be deemed contraband, her Majeſty the Empreſs of Ruſſia, and his Majeſty the King of Sweden, do hereby declare, that they ſhall only acknowledge ſuch Articles to be contraband Commodities as are included and mentioned in the Treaties now ſubſiſting between their reſpective Courts, and the one or the other of the belligerent Powers.

Her Majeſty the Empreſs of Ruſſia conforms herſelf entirely in this reſpect to the Articles X. and XI. of her Treaty of Commerce with the Court of Great Britain, and extends likewiſe the Engagements of this Treaty, which are founded upon the natural Rights of Nations, to the Courts of France and Spain; which ſaid Courts, until the Date of the preſent Convention, have no Treaty of Commerce with her Empire.

His Majeſty the King of Sweden, for his Part, refers chiefly to the Eleventh Article of this Treaty of Commerce with the Court of Great Britain, and to the Tenor of the Preliminary Treaty of Commerce concluded between Sweden and France in the Year 1741; and although the Articles that are to be deemed Contraband are not expreſsly aſcer-

tained

tained and determined in the laſt-mentioned Treaty, the Two Powers having underſtood to conſider each other as *Gens amiciſſima*, the Court of Sweden has, however, reſerved to itſelf the ſame Advantages which the Hanſe-Towns enjoy in France ſince Times immemorial until the preſent Period. The Advantages which are included in the Treaty of Utrecht being fully confirmed, the King has nothing to add thereto. With regard to the Court of Spain, his Swediſh Majeſty finds himſelf in the ſame Situation as the Empreſs of Ruſſia, and following her Majeſty's Example, the King likewiſe extends to the Court of Spain all the Engagements of the above mentioned Treaties, as being founded upon the natural Rights of Nations.

In conſequence of this Difference in the above Article, the Two Kings who have joined her Majeſty the Empreſs of Ruſſia, in this Affair, have acceded, as principal contracting Parties, to the Treaties and Conventions concluded between them and her ſaid Imperial Majeſty, and to this Effect they have ſigned with their own Hand a ſeparate Act, which ſaid Acts have been exchanged in due Form at Peterſburg by the Miniſters of her Imperial Majeſty.

Their

Their High Mightineſſes the States General of the United Provinces, alſo acceded to the ſaid Convention on the 20th of November 1780, and under the ſame Conditions, for what concerns the Articles of contraband, according to the Treaties ſubſiſting between their High Mightineſſes and other Powers, which ſaid Convention has been ſigned at Peterſburg by their Plenipotentiaries on the 5th of January 1781, with the Addition of the following Article:

XIII. For what concerns the Command in Chief of the Naval Forces, in caſe the Squadrons or Ships of War of the Two high contracting Parties ſhould happen to meet, or find it expedient to form a Junction, it is hereby ſtipulated and agreed, that the ſame ſhall be obeyed as is cuſtomary between crowned Sovereigns and the Republick of Holland.

(No. 15.)

DECLARATION of the King of Sweden to the Courts of London, Verſailles, and Madrid, July 21, 1780.

EVER ſince the Beginning of the preſent War, the King has taken Care to manifeſt his Intentions to all Europe. He impoſed unto himſelf the Law of a perfect Neutrality; he has fulfilled all the Duties thereof, with the moſt ſcrupulous Exactitude; and in conſequence thereof, he thought himſelf entitled to all the Prerogatives naturally appertaining to the Qualification of a Sovereign perfectly neuter. But notwithſtanding this, his Commercial Subjects have been obliged to claim his Protection, and his Majeſty has found himſelf under the Neceſſity to grant it to them.

To effect this, the King ordered laſt Year a certain Number of Men of War to be fitted out. He employed a Part thereof on the Coaſts of his Kingdom, and the reſt ſerved as Convoys for the Swediſh Merchant Ships in the different Seas which the Commerce of his Subjects required

them

them to navigate. He acquainted the ſeveral belligerent Powers with theſe Meaſures, and was preparing to continue the ſame during the Courſe of this Year, when other Courts, who had likewiſe adopted a Neutrality, communicated their Sentiments to him, which the King found entirely conformable to his own, and tending to the ſame Object.

The Empreſs of Ruſſia cauſed a Declaration to be delivered to the Courts of London, Verſailles, and Madrid, in which ſhe acquainted them of her Reſolution to protect the Commerce of her Subjects, and to defend the univerſal Rights of Neutral Nations. This Declaration was founded upon ſuch juſt Principles of the Law of Nations and the ſubſiſting Treaties, that it was impoſſible to call them into queſtion. The King found them entirely conformable with his own Cauſe, and with the Treaty concluded in the Year 1660, between Sweden and England, and that between France and Sweden in 1741; and his Majeſty could not forbear to acknowledge and to adopt the ſame Principles, not only with regard to thoſe Powers, with whom the ſaid Treaties are in force, but alſo with regard to ſuch others as are already engaged in the preſent War, or may be involved therein

therein hereafter, and with whom the King has no Treaties to reclaim. It is the univerſal Law, and where there are no particular Engagements exiſting, it becomes obligatory upon all Nations.

In conſequence thereof, the King declares hereby again, " That he will obſerve the ſame Neutrality, and with the ſame Exactitude as he has hitherto done. He will enjoin all his Subjects, under rigorous Pains, not to act in any Manner whatever contrary to the Duties which a ſtrict Neutrality impoſes unto them; but he will protect their lawful Commerce, by all poſſible Means, whenever they carry on the ſame conformably to the Principles here above mentioned."

(No. 16.)

ANSWER of the Court of London to the Declaration of the King of Denmark, July 25, 1780.

DURING the whole Courſe of the Defenſive War which the King ſuſtains againſt France and Spain, His Majeſty has conſtantly reſpected the Rights of all friendly and neutral Powers, conformably to the Tenour of His different Treaties with them, and according to the ſtricteſt and moſt generally recognized Rights of Nations; a Law common to all Nations who have no particular Treaty.

But there have long ſince exiſted Treaties between Great Britain and Denmark. The Flag of his Daniſh Majeſty and the Commerce of his Subjects have always been reſpected, and will continue to be ſo, conformably to the Treaties which ſubſiſt between the Two Nations, and which are the Baſis and the Support of that Friendſhip which has united them for more than a Century. Their reciprocal Rights and Duties are evidently traced by thoſe

ſolemn Engagements which would become illuſory if they could be otherwiſe changed than by mutual Agreement. They actually ſubſiſt in all their Force; and are equally binding to each of the contracting Parties. They form an inviolable Law for both the one and the other. The King has adhered to it, and will adhere to it as ſuch, with that Spirit of Equity which rules all his Proceedings, and with a ſincere Friendſhip for the King of Denmark, in the Expectation of always finding, and in the Perſuaſion that he ſhall always find ſimilar Sentiments and a like Conduct from his Daniſh Majeſty.

(Signed) STORMONT.

London, 25th July 1780.

M. Dreyer, &c. &c. &c.

(No. 17.)

ANSWER of the Court of London to the Declaration of the King of Sweden, dated Auguſt 3, 1780.

DURING the whole Courſe of the War in which Great Britain finds herſelf engaged by the Aggreſſion of France and Spain, the King has invariably adhered to thoſe Principles of Juſtice and Equity, which regulate all His Proceedings. He has faithfully fulfilled all his Engagements with friendly and neutral Powers. The Flag of theſe Powers and the Commerce of their Subjects have been reſpected conformably to the Purport of theſe Engagements. Thoſe which exiſted between Great Britain and Sweden are clear and formal, and furniſh a direct Anſwer to the Declaration which Baron Nolken has tranſmitted by the expreſs Order of his Court.

The 12th Article of the Treaty of 1661, regulating the Form of the Certificate with which the Veſſels ought to be furniſhed, gives this Reaſon for it:

"But

" But leſt ſuch Freedom of Navigation or Paſſage of the one Ally and of his Subjects and People ſhould be of Detriment to the other, while engaged in War by Sea or Land with other Nations; and leſt the Goods and Merchandize belonging to the Enemy ſhould be concealed."

The ſame Article contains a preciſe and formal Stipulation, viz.

" If the Goods of an Enemy are found in a Ship of the Ally, that Part only belonging to the Enemy ſhall be made Prize; and that Part belonging to the Ally, ſhall be immediately reſtored."

(The Treaty of 1666 preſcribes the ſame Certificate, and gives the ſame Reaſons for it.)

Such are the Engagements which bind the Two Nations, and which cannot be violated without prejudicing that Friendſhip which has ſubſiſted for ſo long a Period between them, and of which theſe Engagements are the Baſis and the Support. Treaties cannot be changed but by the mutual Agreement of the contracting Parties; as long as

they ſubſiſt, they are equally binding to both the one and the other.

The King will therefore adhere to theſe Engagements with Sweden as an inviolable and ſacred Law, and He will maintain it as ſuch.

(No. 18.)

INSTRUCTIONS from the King of Denmark to the Merchants trading in the North Sea, or the Atlantic. February 22, 1793.

WE, by the Grace of God, Chriſtian VII. &c.

It is only by ſtrictly obſerving the Rules and Proviſions ſtipulated for by our Treaties with Foreign Powers, that the Merchants of our Kingdoms can enjoy the Security which our Neutrality has procured for the Daniſh Flag during the preſent Calamities of the War. We therefore order,

I.

Whoſoever may deſire to ſend out a Veſſel into the North Sea, or the Atlantic, muſt firſt obtain a Certificate for ſuch Veſſel, after which he will demand a Latin Paſſport at the College of Commerce, which will be granted to him as ſoon as poſ-

ſible, provided nothing oppoſes itſelf to the Voyage.

II.

In order to obtain a Certificate, the Proprietor of the Veſſel muſt be one of our Subjects, and ſettled in our Dominions. He muſt for this Purpoſe addreſs himſelf to the Magiſtrate of the Place to certify by an Oath, either verbal or in Writing, that the Veſſel belongs to him.

III.

As the Principles of Neutrality do not permit any Neutral Veſſel to enter a Port blockaded by any of the belligerent Powers, or to have Articles on board conſidered as contraband, and deſtined for States at War or their Subjects, or finally ſuch as already belong to them; the Magiſtrates muſt inform the Parties concerned of theſe Principles, and be careful that the required Oath contains alſo the Engagement to receive nothing on board which may be compriſed in the under-mentioned Denominations.

IV. By

IV.

By Contraband is underſtood, Fire-arms and other Species of Arms, Horſes, Harneſs, and in general every Article neceſſary for the Conſtruction and Repair of Veſſels, with the Exception however of unwrought Iron, Beams, Boards and Planks of Deal and Fir.

V.

Every Species of Grain and Proviſions, which may at all Times be tranſported even to Places captured by the belligerent Powers provided they are not actually beſieged or blockaded, are not comprized under the Denomination of Contraband.

VI.

In the Treaty of Commerce and Alliance of 1670 with England, it is ſtipulated that amongſt the Ship's Papers there ſhould be, in Time of War, a Certificate to prove that the Cargo belongs to a Neutral Power. In order therefore to prevent all Cauſe of Diſſatisfaction on either Side, we have ordered the Magiſtrates in our Ports to deliver the Certi-

Certificates required on this Subject, and alſo our Conſuls in Foreign Ports ; and the former as well as the latter are enjoined to affix their Signature to them.

VII.

No Latin Paſſport ſhall be granted to any Veſſel either built or purchaſed in our Kingdoms or abroad, unleſs it be furniſhed with a Certificate of its Conſtruction and Contract of Purchaſe, in order that from thence it may appear that the Veſſel is the Property of our Subjects. Theſe Papers, which will be ſigned by the Magiſtrate of the Place, muſt always be kept on board, in order to be produced whenever it may be neceſſary.

VIII.

Every Captain of ſuch Veſſel muſt be a Daniſh Subject and Citizen. He muſt always keep his Certificate of Citizenſhip on board: Previous to his Departure from the Port where he receives his Paſſport, he muſt make Oath before the Magiſtrate or Conſul of the Place, that he will on no Account tranſgreſs the Stipulations of his Paſſport and Certificates.

IX. Beſides

IX.

Beſides the Certificates already mentioned, every Ship ſhall have on board,

A Liſt of the Crew, atteſted by the Magiſtrate of the Place.

The Charter-party and Bill of Lading.

The Certificate of Meaſurement.

The Receipt for the Duties paid at the Place where the Veſſel was laden.

X.

The Certificates mentioned in the Second and Sixth Articles may be delivered upon common Paper.

XI.

For a Latin Paſſport, which muſt be written upon ſtamped Paper, ſhall be paid 32 Daniſh Shillings for each Laſt (2 Tons); for the Certificate of the Veſſel and its Cargo there ſhall be paid to the Magiſtrate

giſtrate of the Place 1 Riſd. for each Veſſel under 50 Laſts (100 Tons), and 1½ for all above. For the other Certificates there ſhall be paid 32 Shillings or 48 Shillings, according as the Veſſel is more or leſs than 50 Laſts; but a Third leſs ſhall be paid at all Places where there is no Magiſtrate.

XII.

Whoſoever ſhall, after having paid for ſuch Paſſport, clearly prove that he has made no uſe of it during his Voyage, may recover his Money all but 1 Riſd. which will be kept in the *Office for Paſſports.*

XIII.

A Paſſport can be made uſe of for one Voyage only, which may be conſidered as terminated from the Moment of the Return of the Veſſel from abroad into ſome Port of our States. It is then the Duty of the Magiſtrate to redemand the Paſſport from the Captain upon giving him a Receipt for the ſame, in order to ſend it back to the Board of Trade.

XIV. The

XIV.

The Certificates reſpecting the Neutrality of the Veſſel, as well as the Cargo, muſt be granted under the Forms preſcribed by the Council of Commerce.

Palace of Chriſtianburgh,
February 22, 1793.

(No. 19.)

CONVENTION between His Britannick Majeſty and the Empreſs of Ruſſia, ſigned at London, the 25th of March 1793.

Article IV.

THEIR Majeſties engage to unite all their Efforts to prevent other Powers, not implicated in this War, from giving, on this Occaſion of common Concern to every civilized State, any Protection whatever, directly or indirectly, in conſequence of their Neutrality, to the Commerce or Property of the French, on the Sea, or in the Ports of France.

(No. 20.)

TREATY between His Britannick Majeſty and the King of Spain, ſigned at Aranjuez, the 25th of May 1793.

Article IV.

THEIR ſaid Majeſties engage reciprocally to ſhut their Ports againſt French Veſſels; not to permit that there ſhall in any Caſe be exported from their Ports for France either Warlike or Naval Stores, or Wheat or other Grains, ſalted Meat or other Proviſions; and to take every other Meaſure in their Power to diſtreſs the Trade of France, and reduce her by that Means to juſt Conditions of Peace.

Article V.

Their ſaid Majeſties alſo engage, the preſent War being generally intereſting to every civilized State, to unite all their Efforts in order to prevent thoſe

thoſe Powers, which do not take Part in the ſaid War, from affording, in conſequence of their Neutrality, any Protection, direct or indirect, on the Seas or in the Ports of France, to the Commerce and Property of the French.

(No. 21.)

CONVENTION between His Britannick Majeſty and the King of Pruſſia. Signed at the Camp before Mayence, the 14th July 1793.

Article III.

THE high contracting Parties having already taken the Reſolution to ſhut all their Ports againſt French Ships, and not to permit the Exportation in any Caſe, from their ſaid Ports for France, of any Military or Naval Stores, or Corn, Grain, Salt Meat, or other Proviſions, they reciprocally engage to continue thoſe Meaſures, and promiſe to employ all other Means which ſhall be in their Power for injuring the Commerce of France, and for bringing her, by ſuch Means, to juſt Conditions of Peace.

Article IV.

Their Majeſties engage to unite all their Efforts to prevent, on this Occaſion of common Concern

Concern to every civilized State, other Powers, not implicated in this War, from giving, in consequence of their Neutrality, any Protection whatever, directly or indirectly, to the Commerce or Property of the French, on the Sea, or in the Ports of France.

(No. 22.)

INSTRUCTIONS for Admiral Tchitchagoff, communicated by Count Woronzow, 24th July 1793.

PARTICIPATING in the actual Operations of our Allies, directed againſt the Diſturbers of general Tranquillity in France, we have, amongſt other effective Co-operations on our Part, ordered our Fleet to be equipped for the preſent Campaign, under your Orders, conſiſting of Twenty-five Ships of the Line, and Nine Frigates, beſides Hoſpital Ships, and others of an inferior Rate, of which you have received the Liſt from the College of Admiralty. The Frigate which wintered in Norway will alſo join this Armament.

As ſoon as the ſaid Fleet ſhall be ready, we order you, after having completely ſupplied it with Proviſions for Four Months, to ſail towards the Sound, and having arrived there, to eſtabliſh there your Station and your Cruize, and at the ſame Time to

detach from it a Squadron of Ten of the ſafeſt and the beſt ſailing Veſſels, which may be able to paſs the Sound without unlading any Part of their Cargo; and to add to it the neceſſary Number of Frigates and other light Veſſels. This Squadron has two Deſtinations: 1ſt, To cruize on the Side of Gothenburgh, of Marſtrand, and of the Ports to the Weſtward of Norway, as well as on the Side of the Canal, without, however, extending itſelf too far. By this means the Commerce of the French may be obſtructed, and France may be prevented from being ſupplied with Proviſions and other Things; and beſides, by this Means the Merchant Veſſels coming from Holland and other Countries at Peace with us, may navigate in the Baltick Sea, and return to their Homes in ſafety. In the Second Place, in caſe we ſhould reſolve to diſpatch by Sea, Part of our Troops to aid the common Cauſe, the ſame Squadron may render their Voyage ſecure by a Convoy, till within Sight of the Squadrons of the King of Great Britain.

The principal Duty of our Naval Armament confided to your Orders, conſiſts in what follows: We are bound, according to our Stipulations with His Majeſty the King of Great Britain, to endea-

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vour to prevent thoſe French who perſiſt in their Rebellion, from receiving any Stores of which they may be in need. The hoſtile Meaſures employed againſt them are not ſtrictly conformable to the natural Law adopted in War, when it unfortunately takes place between Nations under lawful Government. But as theſe Meaſures are taken againſt thoſe arrant Villains who have overturned all Duties obſerved towards God, the Laws, and the Government, who have even gone ſo far as to take away the Life of their own Sovereign, the means of puniſhing theſe Villains, and of making them re-enter the Way of Truth, after having been enveigled into Crimes, ought in Juſtice to be employed in ſuch Manner as to accelerate and enſure Succeſs in ſo ſalutary an Affair.

Therefore we have made Repreſentations, conjointly with the King of England, and with our other Allies, as well at the Court of Stockholm, as at that of Denmark; but our juſt Demands have not been ſatisfactorily anſwered. The Court of Sweden has very far departed from theſe Principles, and from thoſe Rules which Guſtavus the Third had profeſſed, conjointly with us, reſpecting the Affairs of France. The Court of Denmark, with its accuſtomed Weakneſs, and preferring even an

ideal Gain to the ſound Conſiderations of Policy, has refuſed to conſent to our Demands. Wherefore we have determined to declare to them, after the Departure of our Fleet from the Ports of Cronſtadt and of Revel, that we cannot ſee with Indifference Proviſions or Stores ſent to France, which ſerve to nouriſh the Rebels, and, as one may ſay with Truth, the Enemies of the whole World, or to ſupply and furniſh the Armament of their Forces by Land or Sea. That to this Effect we have ordered the taking all Veſſels navigating under the Flag called National, or even under any other which they may, for the Purpoſe of Deceit, have dared to diſplay, wherever they ſhall be met with, and under whatever Convoy they may be found; that conciliating, at the ſame Time, our Moderation with our Engagements, from which it is impoſſible to ſuppoſe that any well-organized Government would have refuſed to co-operate with us, we demand for the ſecond Time, a Prohibition to their Merchant Veſſels from conveying, into the Ports of France, Proviſions or warlike Stores, as well as any Thing which could be of Uſe in the Conſtruction or the Equipment of Veſſels, or the Armament of the Troops of the Rebels; and that, in the mean Time, we acquaint them, that our maritime Forces are ordered, in caſe they ſhould

meet with any Veſſels, who, in Oppoſition to our Will, do carry the above-mentioned Goods, not to permit them to proceed, and to ſend them back to their own Ports, or to other neutral Ports, if they ſhould prefer the latter: And, in fine, that in a ſimilar Affair, which is totally unlike any ordinary Situation, even the Employment of a Convoy cannot exempt Merchant Veſſels from being viſited; therefore, in order to prevent diſagreeable Conſequences, it would be deſirable that there ſhould be no ſuch Convoys of War.

By this, you will clearly ſee our Will and our Intentions; and, in Effect, we order you to obſerve the above-mentioned Rules with the greateſt Exactneſs, and not to permit any Veſſel to be diſpatched or navigated with a Cargo for France; to ſeize upon thoſe French Veſſels which you may meet with, under their rebel Flag, as good Prize, and to ſend back to their own Ports all the neutral Veſſels, or in caſe it ſhould appear to them more advantageous, to permit them to enter any neutral Port belonging to any other Power; provided they do not practiſe any Deceit, and, under this Pretext, remove out of Sight, with a View to gain the Ports of France; in which Caſe theſe Veſſels ought to be directly ſeized, and the Captains

of them treated with the Severity of the Laws of War.

In caſe a Convoy of War ſhould be met with, the Chief of our Squadron, or of the Diviſion of it, muſt inform the Commander of the Convoy by an amicable Communication, that he has received Orders to viſit neutral Veſſels, notwithſtanding their being convoyed, without, however, cavilling, or prejudicing him; but in the Caſe of any hoſtile Attempt on the Part of the Convoy, he muſt maintain the Honour of our Flag, and repel Force by Force, without purſuing, in caſe of Flight, the Veſſels compoſing the Convoy, putting only in Execution what is preſcribed to him for preventing any Navigation into thoſe Ports which are actually in the Power of the common Enemy.

For the better attaining the End propoſed by us, you muſt attentively obſerve not only the Sound, but even the Belt, by Means of Veſſels which you will detach there. We do not apprehend that either Denmark or Sweden are in a State to fit out any Force ſufficient openly to oppoſe our Views. But you muſt uſe no leſs Precaution on your Part, by informing yourſelf of what is paſſing in the Ports of theſe Two northern Powers, in which our

Miniſter

Miniſter Baron Krudener will not fail to be uſeful to you. Beſides, even if any hoſtile Projects ſhould be diſcovered either on the one Side or on the other, you will find in your own Strength ſufficient Means of reducing them to nought, and of thereby evidently proving the Superiority of our Flag in that Sea. In the actual Poſition in which we are with Denmark, every Exertion muſt be made that our Ships of War in the Courſe of this Campaign may be in no Need of entering the Ports of Denmark, in order to prevent the Diſguſts which might ariſe from it. And beſides, we ſuppoſe that by remaining with all the Fleet no later than 10th Auguſt, you will endeavour to reach our Ports of Cronſtadt and of Revel before the Equinox begins. It is above ſtated, that if our Troops ſhould be ſent in Aid of the common Cauſe againſt the Rebels, it would be neceſſary that you ſhould detach a Squadron to cover the Tranſport of theſe Troops, of which Circumſtance we ſhall give you timely Information. But if you ſhould learn from the Commander of theſe Troops their Approach near the Fleet, in this Caſe, without waiting for freſh Orders on our Part, you will make the neceſſary Diſpoſitions, and give Orders to whomſoever it ſhall appertain to defend theſe Tranſport Veſſels, which are intended to carry our Troops, together with

their Equipage and Proviſions, until they arrive within Sight of the Engliſh Squadrons.

By the ſuperior Forces fitted out on the Part of the King of England, we may conclude that the French Fleet will not dare even to appear in the Channel, or in the Waters which are near it; and ſtill leſs that it will attempt to go out for the Purpoſe of meeting our maritime Forces. In all Caſes notwithſtanding, we order you to confirm theſe Orders to the Commander of the Squadron detached for a ſhort Time out of the Sound, that if he ſhould meet with any French Ships of War, to act with regard to them as to Enemies, and that if he ſhould take them, to ſend them and their Crews to your Fleet.

You muſt keep up a regular Correſpondence with our Miniſter at London, Lieutenant General Count Woronzow, informing one another of whatever is neceſſary for the Advantage of our Service. You will likewiſe order the Commander of the detached Squadron, in caſe he ſhould find it neceſſary, to take a ſafe Opportunity of acquainting our ſaid Miniſter with his Cruiſe, and with every Event of it.

We

We authorize you to give to any neutral Subjects, or Subjects of our Allies, the Emperor of the Romans and the King of Pruſſia, being well-meaning Men, and furniſhed with the neceſſary Certificates, who ſhall apply to you for that Purpoſe, Patents for arming Veſſels at their own Expence, to cruize againſt the Rebels of France, obſerving notwithſtanding all the proper Precautions with regard to Depoſits and Sureties, which are preſcribed by our Inſtructions reſpecting Privateers, confirmed in 1788. As to what regards our own Subjects, they muſt addreſs themſelves to our College of Admiralty, for the Purpoſe of procuring Patents.

(No. 23.)

TREATY between His Britannick Majeſty and the Queen of Portugal. Signed at London, the 26th of September 1793.

Article IV.

HER moſt Faithful Majeſty promiſes to ſhut all her Ports againſt the French Ships of War and Privateers, during all the Time that France ſhall be at War with His Britannick Majeſty; her moſt Faithful Majeſty will prohibit her Subjects from exporting from her ſaid Ports for thoſe of France, or from carrying to the Ports of France from any other Port whatſoever, any Military or Naval Stores, or even Corn, ſalted Meat, or any other Proviſions; her ſaid Majeſty alſo engages not to give, nor to permit her Subjects to give any Protection whatſoever, either directly or indirectly, to the Trade or Property of the French, on the Sea,

Sea, or in the Ports of France; and will take, in conſequence of what is declared in this Article, the moſt ſevere Meaſures, in order to maintain the above-mentioned Prohibition in its full Force.

(No. 24.)

CONVENTION between his Majesty the King of Sweden on one Side, and his Majesty the King of Denmark on the other, for the common Defence of the Liberty and Security of the Trade and Navigation of Sweden and Denmark. Done and concluded at Copenhagen, on the 27th of March 1794, ratified at Stockholm on the 3d of April.

HIS Majesty the King of Denmark and Norway, and his Majesty the King of Sweden, having considered how important it is for the Subjects of their Kingdoms to enjoy, with Safety and Tranquillity, the Advantages attached to a perfect Neutrality founded on acknowledged Treaties, penetrated with a Sense of their Duty towards them, and aware of the unavoidable Embarrassments arising from their Position in the War which has broken out in the greatest Part of Europe, have agreed and do agree, to unite their Measures and Interests upon that Subject, and (according to the Example of their

their Predeceſſors) to afford to their reſpective Nations every Protection which they have a Right to expect from their paternal Care. Deſirous beſides of drawing cloſer the Ties of Friendſhip which ſo happily ſubſiſt between them, by a Convention for the general Defence of their Rights, they have named for that Purpoſe, viz. his Daniſh Majeſty, his Miniſter of State, and of Foreign Affairs, Andrew Peter Count Bernſtorff, Knight of the Order of the Elephant, &c. And his Majeſty the King of Sweden, Eric Magnus, Baron Staël of Holſtein, Chamberlain to her Majeſty the Dowager Queen of Sweden, and Knight of the Order of the Sword, who, after having exchanged their full Powers, have agreed upon the following Articles :

Article I.

Their Majeſties declare ſolemnly their Intention of preſerving, during the Courſe of the War, the moſt perfect Neutrality, of avoiding, as much as ſhall depend upon them, every Thing which might commit them with the Powers in Friendſhip and Alliance with them; and of continuing to ſhew them, as they have conſtantly done, in Circumſtances

ſtances ſometimes difficult, every Attention, and even every friendly Deference, conſiſtent with their own Dignity.

II.

They further declare, that they do not claim any Advantage, which may not be clearly founded on all their reſpective Treaties whatſoever, with the different Powers at War.

III.

They alſo reciprocally bind themſelves to each other and to all Europe, not to claim, in ſuch Caſes as are not expreſſed in the Treaties, any Advantage that may not be founded on the univerſal Rights of Nations hitherto recogniſed and reſpected by all the Powers and all the Sovereigns of Europe, and from which Rights they are as far from ſuppoſing that any of them would incline to deviate, as they are incapable of deviating themſelves.

IV.

The Claim and Maintenance of their indiſputable Rights being founded on Grounds ſo juſt, they will

give

give to ſuch of their Subjects as ſhall carry on their Navigation in a Manner regular and conformable to the exiſting Treaties (but not to thoſe who ſhall act otherwiſe) every Protection which they deſerve againſt all thoſe who may wiſh to diſturb, contrary to their Expectation and their Hopes, the legal Exerciſe of thoſe Rights which are ſanctioned, and the Enjoyment of which, by neutral and independent Nations, cannot be diſputed.

V.

In order to attain the Object in View, their Majeſties mutually bind themſelves to equip, as ſoon as the Seaſon will permit, each a Squadron of Eight Ships of the Line, and a proportionable Number of Frigates, furniſhed with every Thing neceſſary.

VI.

Theſe Squadrons ſhall unite or ſeparate according as the common Intereſt and Advantage ſhall require. And this Matter ſhall be regulated with that Friendſhip which ſo happily ſubſiſts between the Two Powers.

VII.

No Diſtinction whatever ſhall be made between the Intereſts of the Two Nations and the Two Flags, excepting that which ſubſiſting Treaties of a contrary Tenour, with other Nations, may require; beſides, in all Caſes of Defence of Convoy, or otherwiſe, without any Exception, the Ships of Denmark ſhall defend the Ships and Flags of Sweden as if they were their own, and *vice versâ* on the Part of Sweden.

VIII.

With regard to the Order of Command, under all Circumſtances, it is agreed to adopt the Tenour of the 6th and 7th Articles of the Convention of July 12th, 1756.

IX.

The Poſſeſſions in Germany, both of Denmark and Sweden, are reciprocally and entirely excluded from this Convention.

X. The

X.

The Baltick, which ought always to be conſidered as a Sea cloſed and inacceſſible to the armed Veſſels of diſtant Powers at War, is again newly declared as ſuch by the contracting Parties, who are determined to preſerve in it the moſt perfect Tranquillity.

XI.

Their Majeſties bind themſelves to communicate in common this Convention to all the Powers at War, adding the moſt ſolemn Aſſurances of their ſincere Deſire to preſerve with them the moſt perfect Friendſhip and Harmony, and rather to cement than to interrupt it by this Meaſure, which tends only to enſure the Rights ſupported and claimed by thoſe Powers themſelves, in all Caſes in which they have been Neutral and at Peace, which Rights Denmark and Sweden never dreamt of oppoſing.

XII.

But if it ſhould unfortunately happen that any Power, in contempt of Treaties and of the univerſal Rights of Nations, ſhould no longer reſpect the

Baſis of Society and of general Happineſs, and ſhould moleſt the innocent Navigation of their Daniſh and Swediſh Majeſties; in that Caſe their ſaid Majeſties, after having exhauſted every poſſible Means of Conciliation, and having jointly made the moſt preſſing Repreſentations to obtain due Satisfaction and Indemnification, ſhall iſſue Orders for Retaliation, at the lateſt, Four Months after the Refuſal of their Intreaties, wherever it ſhall be judged expedient, the Baltic being always excepted, and ſhall in all Reſpects be anſwerable for each other, and ſhall ſupport each other in caſe either Nation ſhall be attacked or inſulted in conſequence of the preſent Convention.

XIII.

This Convention ſhall ſubſiſt in all its Clauſes, as long as this War ſhall continue, unleſs it ſhould be agreed upon by mutual Conſent to make any Addition or Alteration that may be uſeful or neceſſary.

XIV.

The Ratification ſhall take place Fifteen Days after this Convention ſhall have been ſigned and exchanged.

exchanged. In Witneſs whereof, we the Under-ſigned, in virtue of our full Powers, have ſigned the preſent Convention, and have affixed thereto the Seal of our Arms.

Done at Copenhagen, the 27th March 1794.

(L. S.) A. P. V. Bernstorff.

(L. S.) Eric Magnus Staël de Holstein.

(No. 25.)

TREATY of Amity, Commerce, and Navigation, between His Britannick Majesty and the United States of America. Signed at London, the 19th of November 1794.

Article XVII.

IT is agreed, that in all Cases where Vessels shall be captured or detained on just Suspicion of having on board Enemy's Property, or of carrrying to the Enemy any of the Articles which are contraband of War, the said Vessel shall be brought to the nearest or most convenient Port; and if any Property of an Enemy should be found on board such Vessel, that Part only which belongs to the Enemy shall be made Prize, and the Vessel shall be at Liberty to proceed with the Remainder without any Impediment. And it is agreed, that all proper Measures shall be taken to prevent Delay, in deciding the Cases of Ships or Cargoes so brought in for Adjudication; and in the Payment or Recovery of any Indemnification adjudged or agreed to be paid to the Masters or Owners of such Ships.

Article

Article XVIII.

In order to regulate what is in future to be eſteemed contraband of War, it is agreed, that under the ſaid Denomination ſhall be compriſed all Arms and Implements ſerving for the Purpoſes of War, by Land or by Sea, ſuch as Cannon, Muſkets, Mortars, Petards, Bombs, Grenadoes, Carcaſſes, Sauciſſes, Carriages for Cannon, Muſket Reſts, Bandoleers, Gunpowder, Match, Saltpetre, Ball, Pikes, Swords, Head-pieces, Cuiraſſes, Halberts, Lances, Javelins, Horſes, Horſe Furniture, Holſters, Belts, and generally all other Implements of War; as alſo Timber for Ship-building, Tar or Roſin, Copper in Sheets, Sails, Hemp and Cordage, and generally, whatever may ſerve directly to the Equipment of Veſſels, unwrought Iron and Fir Planks only excepted; and all the above Articles are hereby declared to be juſt Objects of Confiſcation, whenever they are attempted to be carried to an Enemy.

(No. 26.)

TREATY of Defenſive Alliance between His Britannick Majeſty and the Emperor of Germany. Signed at Vienna, the 20th of May 1795.

Article VI.

IT is agreed, that in Conſideration of the intimate Alliance eſtabliſhed by this Treaty between the Two Crowns, neither the one nor the other of the high contracting Parties ſhall permit the Veſſels or Merchandize belonging to its Ally, or to the People or Subjects of its Ally, and which ſhall have been taken at Sea by any Ships of War or Privateers whatſoever belonging to Enemies or Rebels, to be brought into its Harbours; nor any Ship of War or Privateer to be therein armed, in any Caſe or under any Pretext whatſoever, in order to cruize againſt the Ships and Property of ſuch Ally, or of His Subjects; nor that there be conveyed by its Subjects, or in their Ships, to the Enemies of its Ally, any Proviſions, or Mili-

tary

tary or Naval Stores. For theſe Ends, as often as it ſhall be required by either of the Allies, the other ſhall be bound to renew expreſs Prohibitions, ordering all Perſons to conform themſelves to this Article, upon Pain of exemplary Puniſhment, in Addition to the full Reſtitution and Satisfaction to be made to the injured Parties.

(No. 27.)

EXTRACT of the Reply of the Executive Government of America to Citizen Adet's Note, incloſing the Decree of the Directory reſpecting Neutral Veſſels.

SIR,

I HAVE the Honour to acknowledge the Receipt of your Note of the 27th ult. covering a Decree of the Executive Directory of the French Republic, concerning the Commerce of Neutral Nations.

This Decree makes no Diſtinction between Neutral Powers, who can claim only the Rights ſecured to them by the Law of Nations, and others, between whom and the French Republic Treaties have impoſed ſpecial Obligations. Where no Treaties exiſt, the Republic, by ſeizing and confiſcating the Property of their Enemies found on board Neutral Veſſels, would only exerciſe an acknowledged Right under the Law of Nations. If, towards ſuch Neutral Nations, the French Republic has forborne to execute this Right, the Forbearance

ance has been perfectly gratuitous. The United States, by virtue of their Treaty of Commerce with France, ſtand on different Ground.

In the Year 1778, France voluntarily entered into a commercial Treaty with us, on Principles of perfect Reciprocity, and expreſsly ſtipulating that free Ships ſhould make free Goods. That is, if France ſhould be at War with any Nation with whom the United States ſhould be at Peace, the Goods (except contraband) and the Perſons of her Enemies (Soldiers in actual Service excepted) found on board the Veſſels of the United States, were to be free from Capture. That on the other Hand if the United States ſhould engage in War with any Nation, while France remained at Peace, then the Goods (except contraband) and the Perſons of our Enemies (Soldiers in actual Service excepted) found on board French Veſſels, were alſo to be free from Capture. This is plainly expreſſed in the 23d Article of that Treaty, and demonſtrates that the Reciprocity thereby ſtipulated was to operate at different Periods; that is, at one Time in favour of one of the contracting Parties, and of the other at another Time. At the preſent Time, the United States being at Peace, they poſſeſs by the Treaty the Right of carrying the Goods of the Enemies of

France,

France, without ſubjecting them to Capture. But what do the Spirit of the Decree of the Executive Directory and the Current of your Obſervations require?—That the United States ſhould now gratuitouſly renounce this Right. And what Reaſon is aſſigned for denying to us the Enjoyment of this Right? Your own Words furniſh the Anſwer: "France, bound by Treaty to the United States, could find only a real Diſadvantage in the Articles of that Treaty, which cauſed to be reſpected, as American Property, Engliſh Property found on board American Veſſels." This Requiſition, and the Reaſon aſſigned to ſupport it, alike excite Surprize. The American Government, Sir, conſcious of the Purity of its Intentions, of its impartial Obſervance of the Laws of Neutrality, and of its inviolable regard to Treaties, cannot for a Moment admit that it has forfeited the Right to claim a reciprocal Obſervance of Stipulations on the Part of the French Republic, whoſe Friendſhip moreover it has every Reaſon to cultivate with the moſt perfect Sincerity. This Right, formerly infringed by a Decree of the National Convention, was recognized anew by the Repeal of that Decree. Why it ſhould be again queſtioned we are at a Loſs to determine. We are ignorant of any new Reſtraints on our Commerce

merce by the Britiſh Government; on the contrary, we poſſeſs recent official Information, that no new Orders have been iſſued.

The Captures made by the Britiſh of American Veſſels, having French Property on board, are warranted by the Law of Nations. The Force and Operation of this Law was contemplated by France and the United States, when they formed their Treaty of Commerce, and their ſpecial Stipulation on this Point was meant as an Exception to an univerſal Rule; neither our Weakneſs nor our Strength have any Choice, when the Queſtion concerns the Obſervance of a known Rule of the Law of Nations.

(No. 28.)

EXTRACT of an Arrêt of the Executive Directory of the 12th Ventoſe.

THE Executive Directory, conſidering, &c. &c. &c. directs,

1. That Ships of War and Privateers may ſtop and bring into the Ports of the Republic, Neutral Ships which ſhall be charged, in Whole or in Part, with Merchandize belonging to the Enemy.

2. That Merchandize belonging to the Enemy ſhall be declared good and lawful Prize, and be confiſcated to the Profit of the Captors.

(No. 29.)

COMMUNICATION received from the Preſident, by the Houſe of Repreſentatives of the United States, together with the Documents therein referred to, on the 19th January 1797.

The following is the Letter to Mr. Pinkney, Miniſter Plenipotentiary of the United States at Paris, alluded to in the Preſident's Meſſage.

SIR, Department of State, Jan. 16, 1797.

IN my Letters of the 5th and 26th ult. I ſent you two Notes from Mr. Adet the Miniſter of the French Republic to the United States; the former dated the 27th of October, and the other the 15th of November laſt; and my Anſwer to the firſt. The latter Note embracing numerous Topics of Complaint, and going as far back as the Year 1793, required a particular Examination of all the Tranſactions of our Government from that Time to the preſent. The other indiſpenſable Duties of the Office prevented my entering on this Examination

tion as early as I had expected, and the current Buſineſs has retarded the Purſuit. The Reſult of this Examination I am now, by the Direction of the Preſident of the United States, to communicate to you. This Hiſtory of our Affairs you will find ſupported by Documents, many of which were delivered to you at your Departure, and the Reſidue will be herewith tranſmitted. The Remarks and Reaſonings on Facts you will duly appreciate; and from the Whole, joined with your own Obſervations, you will be enabled, it is believed, to vindicate the United States, and to demonſtrate their Impartiality as a neutral Nation, their Fidelity in the Obſervation of Treaties, and their Friendſhip as an Ally.

The Diſcuſſion on which I am entering, will involve much Repetition; for the general Queſtions and particular Caſes grouped together in the Miniſter's laſt Note, have been Subjects of Controverſy and Correſpondence from May 1793 to this Day. Some other Points have indeed been contended for, which the Miniſter has now paſſed without Notice. Why they are omitted I know not; for in theſe Caſes the United States were as poſitively charged with violating Treaties as in thoſe which he has been pleaſed now to detail. Some of them it may be

be found proper to introduce, to render leſs imperfect the View of our Relations to France.

The Complaints of the French Miniſter againſt the United States have reference to three principal Subjects:

1ſt, To the Abandonment of their neutral Rights to the Injury of France, in not maintaining the pretended Principles of the modern Law of Nations, that free Ships make free Goods, and that Timber and Naval Stores for the Equipment and Armament of Veſſels are not contraband of War.

2d, To Violations of our Treaties with France, even in their Letter.

3d, To the Treaty of Amity and Commerce between the United States and Great Britain; which, he alleges, "deprives France of all the Advantages ſtipulated in a previous Treaty."—A fourth Complaint is truly ingenious. The Fortune of War has conſtrained ſome of the belligerent Powers, from Enemies to become her Allies; and if the alleged Abandonment of the Rules of the modern Law of Nations, in its Conſequences, works an Injury to thoſe Allies, from that Moment

France is alſo injured. Perhaps it will be in time to notice this laſt Charge when thoſe Allies themſelves complain; if the Anſwer to the Firſt, involving the ſame Principle, ſhould not render ſuch Notice altogether unneceſſary.

I ſhall now preſent to your View thoſe Facts and Obſervations which will prove, we conceive, that the Miniſter's Complaints are without any juſt Foundation.

Under the firſt Charge, that we have not maintained, as we ought to have done, our neutral Rights, it is alleged;

1ſt, That the Poſition that free Ships make free Goods, is an eſtabliſhed Principle of the modern Law of Nations; and that Great Britain, by capturing French Property on board our Veſſels, has violated our neutral Rights; and that unleſs we compel Great Britain to reſpect thoſe Rights, France will be juſtified in violating them.

Not to remark on the ſingular Reaſoning, that if one warring Power commits an Act of Injuſtice towards a neutral and innocent Nation, another warring Power may lawfully commit the like Injuſtice, we may aſk, what Authority is adduced,

to ſhow that the modern Law of Nations has eſtabliſhed the Principle, that free Ships make free Goods? Vattel ſays poſitively that "Effects belonging to an Enemy found on board a neutral Ship, are ſeizable by the Rights of War." Agreeably to this long-eſtabliſhed Rule of the Law of Nations, France herſelf, in her Marine Laws, has directed that the Merchandizes and Effects belonging to her Enemies which ſhall be found on board neutral Veſſels ſhall be good Prize. By a former law indeed the neutral Veſſels themſelves, as well as the Effects of her Enemies on board, were declared to be good Prize. Valin remarks, however, that this Regulation was peculiar to France and Spain; and that elſewhere the Goods of the Enemy were alone ſubjected to Confiſcation. And in the Treaty of France with the City of Hamburgh in 1769, it was ſtipulated that "all Effects, Proviſions, and Merchandize whatſoever belonging to her Enemies, and found on board the Veſſels of Hamburgh, ſhould be confiſcated."

Mr. Adet remarks, that one of his Predeceſſors, in July 1793, applied on this Subject to the Government of the United States, but was unſucceſsful. He muſt refer to Mr. Genet's Letter to Mr. Jefferſon, dated July 9th, 1793 (the Subject was

resumed in Terms still more extraordinary in his Letter of July 25th 1793), to which Mr. Jefferson answered on the 24th, declaring "his Belief that it cannot be doubted but that, by the general Law of Nations, the Goods of a Friend found in the Vessel of an Enemy, are lawful Prize."—"It is true that sundry Nations, desirous of avoiding the Inconveniencies of having their Vessels stopped at Sea, ransacked, carried into Port and detained, under Pretence of having Enemy Goods on board, have in many Instances introduced, by their special Treaties, another Principle between them, that Enemy Bottoms shall make Enemy Goods, and Friendly Bottoms Friendly Goods;—but this is altogether the Effect of particular Treaty, controlling in special Cases the general Principle of the Law of Nations, and therefore taking Effect between such Nations only as have so agreed to control it." And it is plain, that it was to avoid the Inconveniences resulting from this general Rule of the Law of Nations, that France and the United States stipulated, in the 23d Article of their Commercial Treaty, "That free Ships should give Freedom to Goods; and that every Thing should be deemed free which should be found on board the Ships belonging to the Subjects of either of the contracting Parties, although the whole Lading, or

any

any Part thereof, ſhould appertain to the Enemies of either, contraband Goods being always excepted." It is alſo plain that this Stipulation was intended to operate (indeed it was its ſole Object, and otherwiſe could have no Operation at all) when one of the Parties ſhould be at War with a Nation or Nations with whom the other ſhould be at Peace. France, therefore, has now no Right to complain if the Goods of her Enemies find Protection on board American Ships, or to pretend, that in order "to reſtore the Balance of Neutrality to its Equilibrium," ſhe may ſeize on ſuch Goods; the juſt Equilibrium between her and the United States will be reſtored when we are at War and ſhe at Peace; at which Time the Goods of our Enemies will find protection on board the Veſſels of her Citizens.

2d, It is alleged, that we have abandoned the modern publick Law on contraband, and by our Treaty with Great Britain granted to that Power excluſively the free Carriage of Articles for the Equipment and Armament of Veſſels.

Here, as in the former caſe, the Queſtion recurs, What is the Law of Nations on the Point in diſpute? Vattel defines Contraband Goods to be

" Commodities particularly uſed in War; ſuch as Arms, Military and Naval Stores, Timber, Horſes, and even Proviſions in certain Junctures, when there are Hopes of reducing the Enemy by Famine." In the Treaty between France and Denmark, concluded on the 23d of Auguſt 1742, " Tar was declared contraband, together with Roſin, Sails, Hemp, Cordage, Maſts, and Timber for Shipbuilding."—" Thus, on this Account" ſays Valin, " there would have been no Cauſe for complaining of the Conduct of the Engliſh, if they had not infringed particular Treaties; for of right theſe Things are now contraband, and have been ſo ſince the Beginning of this Century, which, however, was not the Caſe formerly."—" The modern publick Law on Contraband," mentioned by Mr. Adet and his Predeceſſors, probably refers to the Principles declared by the Armed Neutrality during the American War. This Tranſaction is too remarkable to be paſſed unnoticed.

During that War, Great Britain and the other belligerent Powers, exerciſing the Rights aſſured to them by the Law of Nations, made Prize of Enemies Property on board neutral Veſſels, and of contraband Goods belonging to Neutrals. Eager as neutral Nations muſt be to ſeize the Opportu-

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nity which War preſents, of becoming the Carriers for the belligerent Nations, whoſe Ships and Mariners are wanted for Military Operations, it was perfectly natural that the former ſhould deſire to eſtabliſh as a Rule, that free Ships ſhould make free Goods; or, in other Words, that neutral Bottoms ſhould protect the Goods on board, to whomſoever they belonged; and it was equally natural for them to deſire to diminiſh the Liſt of Contraband. In reſpect to the latter, it muſt have been particularly intereſting to the three northern maritime Powers, from whoſe Dominions chiefly the other maritime Nations of Europe received Supplies of Timber and Naval Stores, to ſtrike theſe from the Liſt of Contraband, or by ſome Means to exempt them from Capture.

With theſe Diſpoſitions, the Empreſs of Ruſſia, in February 1780, made publick the Principles on which ſhe would maintain the Commerce of her Subjects. It is neceſſary here to recite only two of them: 1. That all the Effects belonging to Subjects of the Nations at War ſhould be free on board neutral Veſſels; contraband Goods excepted. 2. That the Articles of contraband ſhould be regulated by the 10th and 11th Articles of her Treaty of Commerce with Great Britain, extending the

Regulations of thoſe Articles to all the belligerent Powers.

To enforce the Obſervance of theſe Principles, ſhe gave Orders for equipping a conſiderable part of her Marine.

In July of the ſame Year, Denmark acceded to the Principles of the Armed Neutrality, and entered into a Convention with Ruſſia, for maintaining them; aſſuming for her Rule in determining what Articles ſhould be deemed Contraband, her Treaty of Commerce with Great Britain, concluded the 11th of July 1670. In the Third Article of this Treaty, the Deſcription of contraband Goods is in general Terms: "Any Proviſions of War, as Soldiers, Arms, Machines, Cannon, Ships, or other Things of neceſſary Uſe in War." But by a Convention concluded at London on the 4th July 1780, between Great Britain and Denmark, "to explain the Treaty of Commerce of 1670 between the Two Powers," the Articles deemed contraband are particularly enumerated, and among them we ſee "Timber for Ship-building, Tar, Roſin, Copper in Sheets, Sails, Hemp, and Cordage, and generally whatever ſerves directly for the Equipment of a Veſſel, unwrought Iron and Fir-planks excepted."

cepted." It is remarkable, that theſe are the very Articles admitted as Contraband in the 18th Article of our Treaty of Commerce with Great Britain, and for which Admiſſion Mr. Adet declares, " all the Commercial Relations between France and the United States are entirely broken."

But it is further to be noticed, that this Convention between Ruſſia and Denmark, concluded in the Midſt of the American War, for maintaining the Principles of the Armed Neutrality, and to which other European Powers acceded, is explicitly declared in the 9th Article, to have been concluded and agreed on for the Time that War ſhould laſt; though it was to ſerve as a Baſis to future Engagements, which Circumſtances might render neceſſary, on account of new naval Wars in Europe. And with the latter View, the King of Sweden manifeſted the utmoſt Solicitude leſt the War ſhould be cloſed without the Intervention of neutral Powers. He therefore was urgent that the Empreſs, with all the Parties to the maritime Convention, " ſhould propoſe to the belligerent Powers the eſtabliſhing of a Congreſs, in which the different Concerns both of the Powers at War, and of the neutral States, ſhould be examined and terminated." And theſe Concerns he afterwards

mentions

mentions to be the Pacification, and the ſettling of a maritime Code of Laws:" Objects truly important, and meriting all the Solicitude manifeſted on the Occaſion by the King.

But theſe Steps of the King of Sweden ſerve as additional Proofs that the Principles of the Armed Neutrality were not conſidered by the Parties to the maritime Convention as ſanctioned by the exiſting Law of Nations. For permanently to eſtabliſh thoſe aſſumed Principles, by introducing them into a maritime Code, was obviouſly the influential Motive with the King for deſiring a Congreſs, at which ſuch a Code might be ſettled with the Aſſent of all the Nations of Europe. But this Project did not ſucceed: No Congreſs was formed: The belligerent Powers made Peace at different Periods, and with that War ended the maritime Convention. This no Nation has more Reaſon to regret than our own, as well becauſe the Principles in queſtion reſpect ſome very valuable Portions of our Exports, as becauſe our Diſpoſition and our Policy preſerving us in Peace, ſuch an extended Liberty of Commerce would prove highly advantageous to us as Carriers for the Powers at War.

We

We have ſeen, then, that the Law of Nations, the Marine Laws of France, her own Treaties as well as thoſe of other Nations, and even the Syſtem of the Armed Neutrality, inconteſtably eſtabliſh theſe Principles:—That Enemies Goods on board neutral Veſſels are rightful Subjects of Capture and Condemnation; and that Timber and other Articles for the Equipment and Armament of Ships, are Contraband of War; and, therefore, that the Admiſſion of theſe Principles, in the Treaty between the United States and Great Britain, not being a Grant to her of any Right, (for in what Senſe could we be ſaid to give what ſhe before poſſeſſed?) furniſhes no juſt Ground of Offence to France. In what Senſe too can the United States be ſaid to have "refuſed to other Nations a Right," which they and we voluntarily and mutually agreed to renounce? Or how are we chargeable with "Partiality in favour of England," becauſe we do not take Arms to compel her alſo to renounce it.

(No. 30.)

TREATY of Navigation and Commerce between his Britannick Majesty and the Emperor of Russia. Signed at St. Petersburgh the $\frac{10}{21}$ of February 1797.

Extract of Article X.

WITH respect to the searching of Merchant Ships, Ships of War and Privateers shall conduct themselves as favourably as the Course of the War then existing may possibly permit it towards the most friendly Powers which shall remain neutral, observing, as much as possible, the acknowledged Principles and Rules of the Law of Nations.

Extract of Article XI.

All Cannons, Mortars, Fire Arms, Pistols, Bombs, Grenades, Balls, Bullets, Muskets, Flints, Matches, Powder, Saltpetre, Sulphur, Cuiraſſes, Pikes, Swords, Belts, Cartouch Boxes, Saddles, and Bridles, beyond the Quantity which may be

neceſſary

neceſſary for the Uſe of the Ship, or beyond that which each Man ſerving on board the Veſſel or Paſſenger ſhall have, ſhall be eſteemed warlike Proviſions or Ammunition, and if any are FOUND, they ſhall be confiſcated, according to the Laws, as contraband or prohibited Effects.

Article XII.

If, which God forbid, Peace ſhould be broken between the Two high contracting Parties, neither Perſons, Ships, nor Merchandize ſhall be detained or confiſcated; but the Term of a Year at leaſt ſhall be granted, for the Purpoſe of ſelling, diſpoſing of, or carrying away their Effects, and withdrawing themſelves wherever they ſhall pleaſe, which is to be underſtood equally reſpecting all thoſe who ſhall be in the Sea and Land Service, and they ſhall be permitted, previous to or at their Departure, to conſign the Effects of which they ſhall not have diſpoſed, as well as the Debts to which they may have a Claim, to ſuch Perſon as they ſhall judge proper, to be diſpoſed of according to their Will and Profit; which Debts the Debtor ſhall equally be obliged to pay as if the Rupture had not taken place.

(No. 31.)

EXTRACT of a Note delivered to the French Government by Charles Cotesworth Pinckney, J. Marshall, and E. Gerry, Esquires, Envoys Extraordinary and Ministers Plenipotentiary from the United States, dated Paris, 17 Jan. 1798.

AT this period, a great Principle was brought into Discussion, the dispassionate Consideration of which is essential to the fair Estimate of the Charges made by France against the Government of the United States. The Property of French Citizens was taken by British Cruizers and Ships of War, out of American Bottoms, and the American Government submitted to the Practice. The Propriety of submitting to it depends entirely on the naked Right of the Captors, under the existing Circumstances of the Case, to exercise such a Power. The Circumstances were these: In the Treaty of Commerce made between France and the United States in February 1778, it was stipulated in Substance, that neither Party should take out of the Vessels of the other, the Goods of its Enemy, but that

that the Character of the Bottom ſhould be imparted to its Cargo. With England the United States had made no Stipulation on the Subject.

It follows then, that the Rights of England, being neither diminiſhed or increaſed by Compact, remained preciſely in their natural State, and were to be aſcertained by ſome pre-exiſting acknowledged Principle.

This Principle is to be ſearched for in the Law of Nations. That Law forms, independent of Compact, a Rule of Action by which the Sovereignties of the civilized World conſent to be governed. It preſcribes what One Nation may do without giving juſt Cauſe of War, and what, of Conſequence, another may and ought to permit without being conſidered as having ſacrificed its Honour, its Dignity, or Independence.

What then is the Doctrine of the Law of Nations on this Subject? Can neutral Bottoms, of Right, independent of particular Compact, protect hoſtile Goods? The Queſtion is to be conſidered on its own Right, uninfluenced by the Wiſhes or the Intereſts of a neutral or belligerent Power.

It is a general Rule that War gives to a belligerent Power a Right to ſeize and confiſcate the Goods of his Enemy. However Humanity may deplore the Application of this Principle, there is perhaps no one to which Man has more univerſally aſſented, or to which Juriſts have more uniformly agreed. Its Theory and its Practice have unhappily been maintained in all Ages. This Right then may be exerciſed on the Goods of an Enemy wherever found, unleſs oppoſed by a ſuperior Right. It yields by common Conſent to the ſuperior Right of a neutral Nation to protect, by virtue of its Sovereignty, the Goods of either of the belligerent Powers found within its Juriſdiction. But can this Right of Protection, admitted to be poſſeſſed by every Government within its own Limits in virtue of its abſolute Sovereignty, be communicated to a Veſſel navigating the High Seas.

It is ſuppoſed that it cannot be ſo communicated; becauſe the Ocean being common to all Nations, no abſolute Sovereignty can be acquired in it—the Rights of all are equal, and muſt neceſſarily check, limit, and reſtrain each other. The ſuperior Right therefore of abſolute Sovereignty to protect all Property within its own Territory, ceaſes to be ſuperior when the Property is no longer within its

own

own Territory, and may be encountered by the oppoſing acknowledged Right of a belligerent Power to ſeize and confiſcate the Goods of his Enemy. If the Belligerent permits the Neutral to attempt without Hazard to himſelf, thus to ſerve and aid his Enemy, yet he does not relinquiſh the Right of defeating that Attempt whenever it ſhall be in his Power to defeat it. Thus it is admitted that an armed Veſſel may ſtop and ſearch at Sea a neutral Bottom, and may take out Goods which are contraband of War, without giving Cauſe of Offence, or being ſuppoſed in any Degree to infringe neutral Rights. But this Practice could not be permitted within the Rivers, Harbours, or other Places of a Neutral, where its Sovereignty was complete. It follows then that the full Right of affording Protection to all Property whatever, within its own Territory, which is inherent in every Government, is not tranſferred to a Veſſel navigating the high Seas. The Right of a Belligerent over Goods of his Enemy within his Reach, is as complete as his Right over contraband of War; and it ſeems a Poſition not eaſily to be refuted, that a Situation that will not protect the one, will not protect the other. A neutral Bottom then does not of Right, in Caſes where no Compact exiſts, protect from his Enemy the Goods of a belligerent Power.

To this Reaſoning the Practice of Nations has conformed, and the common Underſtanding of Mankind ſeems to have aſſented. Vattel, B. 3. Sect. 115. ſays poſitively, "that Effects belonging to an Enemy, found on board a neutral Ship, are ſeizable by the Rights of War."

Vattel is believed to be ſupported by the moſt approved Writers on the ſame Subject. It is deemed unneceſſary to multiply Citations to this Point, becauſe France herſelf is ſuppoſed to have decided it. In her maritime Ordonnance of the Year 1744, which is conſidered as having been in Force in 1778, Enemies Goods in neutral Bottoms generally are declared liable to Seizure and Confiſcation. From the Operation of this Rule are excepted the Veſſels of Denmark and the United Provinces, to whom ſpecial Treaties ſecured the Exception. In the Ordonnance of the 26th of July 1778, the Firſt Article of which is conſidered as forbidding the Cruizers of France to ſtop and bring into Port neutral Veſſels, having on board the Goods of an Enemy, a Power is reſerved to revoke the Privilege granted to Neutrals by that Article, if the Enemy ſhould not grant the ſame Privilege within Six Months, from the Publication of that Regulation. This clearly indicates a Conviction

that

that the Exemption from Captures of the Goods of an Enemy, which ſhould be found on board the Veſſel of a neutral Power, not having ſtipulated ſuch Exemption by Treaty, was a Privilege granted by the Ordonnance; and that the mere Revocation of the Ordonnance would aboliſh the Privilege, and reſtore the ancient Rule. It will not be contended that France continued in a long Courſe of Practice and of Legiſlation oppoſed to her own Opinion of the Laws of Nations. It muſt then be conſidered as the Opinion of France, that under the Law neutral Bottoms afford no Protection to the Goods of an Enemy. This Principle, thus admitted to have been eſtabliſhed, is ſuppoſed by ſome to have been changed by the Armed Neutrality. A new Law of Nations, it is pretended, was introduced by the Confederation; but who were the Parties to that Confederation, and what was its Object? The Northern Maritime Powers united to protect by Force, in their own Bottoms, during the then exiſting War, the Goods of either and of all the belligerent Powers. The Compact in its own Nature was confined with reſpect to its Object and its Duration. It did not purport to change, nor could it change permanently and univerſally, the Rights of Nations not becoming Parties to it. It did indeed hold forth the Promiſe of future, more per-

manent, and more general Engagements for the ſame Object; but ſuch Engagements were never formed. How then can this temporary and partial Convention be conſidered as altering, radically and generally, Principles which have been radically and univerſally adopted, and in the Modifications of which all have an Intereſt? Would France herſelf admit that a Combination, ſuch as that which conſtituted Neutrality, may rightfully change the Law of Nations, and eſtabliſh a new Code of univerſal Obligation? It is believed that no Nation on Earth would more perſeveringly oppoſe ſuch an Invaſion of its Sovereignty.

There ſeems then to be no ſolid Ground for maintaining, that the general Law of Nations has been at all varied by the Armed Neutrality.

It remains to inquire whether the Treaties between France and the United States pledge either Nation to aſſert and eſtabliſh the Principle, that free Bottoms make free Goods.

The Treaty of Amity and Commerce, concluded the 6th of February 1778, ſtipulates reciprocally for the Right of trading with and protecting the Goods of the Enemy of either Party in the Veſſels

of

of the other, and in Turn ſurrenders its own Goods found in the Veſſels of an Enemy; but it contains no Clauſe impoſing on either Party the Duty of extending the Principle, or of ſupporting its Application to other Nations. The Stipulations of that Treaty are negative as well as affirmative. They ſpecify as well the Diſabilities intended to be created, and the Duties to be impoſed, as the Privileges deſigned to be granted. Had it been intended that either Nation ſhould have been bound to maintain this Principle in its Intercourſe with others, or ſhould have been in any Degree incapacitated from proſecuting freely that Intercourſe, without the previous Admiſſion of the Principle, a Stipulation to that Effect would have been made. No ſuch Stipulation having been made, the Parties cannot be preſumed to have intended it. Indeed it would have been Madneſs in the United States, under their preſent Circumſtances, to have formed ſuch an Agreement. There being no expreſs Stipulation to this Effect, it cannot be ſuppoſed to have been implied. Nations forming a ſolemn Compact which ought to regulate their Conduct towards each other, which is to be reſorted to for the Standard of adjuſting their Differences, do not leave to Implication ſuch delicate and important Points. Indeed, if a great Principle not mentioned is per-

mitted to be implied, the Object of a written Agreement, which is itſelf to evidence all the Obligation it creates, is totally defeated. But who is to make the Implication, and to what Extent is Implication to be allowed? It is very eaſy to perceive, that the Doctrine of implying in Contracts Stipulations never formed, would deſtroy all Certainty of Conſtruction, and open a boundleſs Field of Controverſy to the contracting Parties.

It reſults from the very Nature of a Contract which affects the Rights of the Parties, but not of others, and from the Admiſſion of a general Rule of Action, binding independent of Compact, which may be changed by Conſent, but is only changed ſo far as that Conſent is actually given, that a Treaty between any Two Nations muſt leave to all others thoſe Rights which the Law of Nations acknowledges; and muſt leave each of the contracting Parties ſubject to the Operation of thoſe Rights. For the Truth of this Poſition, believed to be ſo clear in itſelf, and which it is ſuppoſed the Hiſtory of Europe will illuſtrate, the Ordonnance of 1744, already quoted, is conſidered as furniſhing an unequivocal Authority. By that Ordonnance, the Law of Nations is applied to all thoſe Neutrals with whom France had not ſtipulated that the Quality

of

of their Bottoms ſhould be imparted to their Cargoes, while thoſe, with whom ſuch Stipulations had been made, are exempted from the Application of the Law.

The Deſire of eſtabliſhing univerſally the Principle that neutral Bottoms ſhall make neutral Goods, is perhaps felt by no Nation on Earth more ſtrongly than by the United States. Perhaps no Nation is more deeply intereſted in its Eſtabliſhment. It is an Object they keep in View, and if not forced by Violence to abandon, they will purſue in ſuch Manner as their own Judgment may dictate as being beſt calculated to attain it; but the Wiſh to eſtabliſh a Principle is eſſentially different from a Determination that it is already eſtabliſhed. The Intereſts of the United States could not fail to produce the Wiſh; their Duty forbid them to indulge it, when deciding on a mere Right. However ſolicitous America might be to purſue all proper Means, tending to obtain for this Principle the Aſſent of all or any of the maritime Powers of Europe, ſhe never conceived the Idea of obtaining that Conſent by Force.

The United States will only arm to defend their own Rights: Neither their Policy nor their Intereſts

permit them to arm, in order to compel a Surrender of the Rights of others. Theſe and other Conſiderations, which have been ſubmitted to the Government of France, produced on the Part of the United States, a Deciſion, that their Bottoms could not of Right protect the Goods of a belligerent Power from an Enemy not bound to reſpect the Principle. This Deciſion was founded on the moſt perfect Conviction that it was enjoined by the Law of Nations; and that good Faith, Reſpect for Truth, and for the Duties of an upright and honeſt Judgment, render it indiſpenſable. This Conviction remains unſhaken. If theſe Arguments, which ſtill appear concluſive to the American Government, have not the ſame Operation on the Judgment of France, they muſt at leaſt be ſufficient to evince the Sincerity with which that Government has acted; and to prove that its Conduct, in this Reſpect, was produced by a Senſe of Duty, and not by any Partiality for a Nation againſt which it was, at that Time, conſiderably irritated by other Cauſes.

The Underſigned, Citizen Miniſter, rely too implicitly on your Candour and Diſcernment, to apprehend that you will eſtimate improperly the Motives

tives which on this eſſential Point have influenced and guided the United States.

The early Deciſion of the American Government on this Subject was immediately openly avowed, and amply ſupported by Mr. Jefferſon, the then Secretary of State, in his Letter to Mr. Genet, dated the 24th of July 1793, and in his Letter to Mr. Morris, dated 16th of Auguſt in the ſame Year. The Arguments which thoſe Letters contain, were ſuppoſed to have ſatisfied the Government of France, ſince its Miniſters in the United States no longer controverted the Principle they ſupported. Indeed thoſe Arguments appeared too concluſive to permit a Doubt concerning the Succeſs which would attend them.

(No. 32.)

CASE of the Maria, &c. argued in the High Court of Admiralty, Right Honourable Sir William Scott, Judge, 11th June 1799.

THIS Ship was one of a Fleet of Swediſh Merchantmen, carrying Pitch, Tar, Hemp, Deals, and Iron, to ſeveral Ports of France, Portugal, and the Mediterranean; and taken Jan. 1798, ſailing under Convoy of a Ship of War; and proceeded againſt for Reſiſtance of Viſitation and Search by Britiſh Cruizers.

Judgment.—This Ship was taken in the Britiſh Channel in Company with ſeveral other Swediſh Veſſels ſailing under Convoy of a Swediſh Frigate, having Cargoes of Naval Stores and other Produce of Sweden on board, by a Britiſh Squadron under the Command of Commodore Lawford.

The Facts attending the Capture did not ſufficiently appear to the Court upon the original Evidence; it therefore directed further Information to be ſupplied, and by both Parties.

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The additional Information now brought in consists of several Attestations made on the Part of the Captors, and of a Copy of the Instructions under which the Swedish Frigate sailed, transmitted to the King's Proctor from the Office of the British Secretary of State for the foreign Department. On the Part of the Swedes some Attestations and Certificates have been introduced, but all of them applying to collateral Matter, none relating immediately to the Facts of the Capture.—On this Evidence the Court has to determine this most important Question; for its Importance is very sensibly felt by the Court. I have, therefore, taken some Time to weigh the Matter maturely; I should regret much, if that Delay has produced any private Inconvenience; but I am not conscious (attending to the numerous other weighty Causes that daily press upon the Attention of the Court,) that I have interposed more Time in forming my Judgment than was fairly due to the Importance of the Question, and to the Magnitude of the Interests involved in it.

In forming that Judgment, I trust that it has not escaped my anxious Recollection for one Moment, what it is that the Duty of my Station calls for from me;—namely, to consider myself as stationed here, not

not to deliver occaſional and ſhifting Opinions to ſerve preſent Purpoſes of particular national Intereſt, but to adminiſter with Indifference that Juſtice which the Law of Nations holds out, without Diſtinction to independent States, ſome happening to be neutral and ſome to be belligerent. The Seat of judicial Authority is, indeed, locally here, in the belligerent Country, according to the known Law and Practice of Nations: but the Law itſelf has no Locality.—It is the Duty of the Perſon who ſits here, to determine this Queſtion exactly as he would determine the ſame Queſtion if ſitting at Stockholm;—to aſſert no Pretenſions on the Part of Great Britain which he would not allow to Sweden in the ſame Circumſtances, and to impoſe no Duties on Sweden, as a neutral Country, which he would not admit to belong to Great Britain in the ſame Character. If, therefore, I miſtake the Law in this Matter, I miſtake that which I conſider, and which I mean ſhould be conſidered, as the univerſal Law upon the Queſtion; a Queſtion regarding one of the moſt important Rights of belligerent Nations relatively to Neutrals.

The only ſpecial Conſideration which I ſhall notice in favour of Great Britain (and which I am entirely deſirous of allowing to Sweden in the

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ſame or ſimilar Circumſtances) is, that the Nature of the preſent War does give this Country the Rights of War, relatively to neutral States, in as large a Meaſure as they have been regularly and legally exerciſed, at any Period of modern and civilized Times. Whether I eſtimate the Nature of the War juſtly, I leave to the Judgment of Europe, when I declare that I conſider this as a War in which neutral States themſelves have an Intereſt much more direct and ſubſtantial than they have in the ordinary, limited, and private Quarrels (if I may ſo call them) of Great Britain and its great public Enemy. That I have a Right to advert to ſuch Conſiderations, provided it be done with Sobriety and Truth, cannot, I think, reaſonably be doubted—and if Authority is required, I have Authority—and not the leſs weighty in this Queſtion for being Swediſh Authority—I mean the Opinion of that diſtinguiſhed Perſon, one of the moſt diſtinguiſhed which that Country (fertile as it has been of eminent Men) has ever produced, I mean Baron Puffendorff *: The Paſſage to which

* Puffendorff was not actually born in Sweden, but is uſually claimed and allowed as a Writer of that Country, from his Employment in it under the King of Sweden. The great Work on which his Fame is principally built, was given to the World during his Reſidence in it.

I allude is to be found in a Note of Barbeyrac's, on his larger Work, l viii. c. 6. ſ. 8.—Puffendorff had been conſulted in the Beginning of the preſent Century, when England and other States were engaged in the Confederacy againſt Louis XIV. by a Lawyer upon the Continent, Groningius, who was deſirous of ſupporting the Claims of neutral Commerce, in a Treatiſe which he was then projecting. Puffendorff concludes his Anſwer to him in theſe Words:

"I am not ſurpriſed that the northern Powers ſhould conſult the general Intereſts of all Europe, without Regard to the Complaints of ſome greedy Merchants, who care not how Things go, provided they can but ſatisfy their Thirſt of Gain. Thoſe Princes wiſely judge that it would not become them to take precipitate Meaſures, whilſt other Nations are combining their whole Force to reduce within Bounds an inſolent and exorbitant Power which threatens Europe with Slavery, and the Proteſtant Religion with Deſtruction. This being the Intereſt of the northern Crowns themſelves, it is neither juſt nor neceſſary that, for the preſent Advantage, they ſhould interrupt ſo ſalutary a Deſign, eſpecially as they are at no Expence in the Affair, and run no Hazard."—In the Opinion, then, of this

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wiſe and virtuous Swede, the Nature and Purpoſe of a War was not entirely to be omitted in the Conſideration of the warrantable Exerciſe of its Rights, relatively to neutral States.—His Words are memorable:—I do not over-rate their Importance, when I pronounce them to be well entitled to the Attention of his Country.

It might likewiſe be improper for me to paſs entirely without Notice, as another preliminary Obſervation, (though without meaning to lay any particular Streſs upon it,) that the Tranſaction in Queſtion took place in the Britiſh Channel, cloſe upon the Britiſh Coaſt, a Station over which the Crown of England has, from pretty remote Antiquity, always aſſerted ſomething of that ſpecial Juriſdiction which the Sovereigns of other Countries have claimed and exerciſed over certain Parts of the Seas adjoining to their Coaſts.

In conſidering the Caſe, I think it will be adviſeable for me, firſt, to ſtate the Facts as they appear in the Evidence; ſecondly, to lay down the Principles of Law which apply generally to ſuch a State of Facts; thirdly, to examine whether any ſpecial Circumſtances attended the Tranſaction in any Part

Part of it, which ought in any Manner or Degree to affect the Application of theſe Principles.

The Facts of the Capture are to be learnt only from the Captors; for, as I have obſerved, the Claimants have been entirely ſilent about them, and that Silence gives the ſtrongeſt Confirmation to the Truth of the Accounts delivered by the Captors.

The Atteſtation of Captain Lawford introduces and verifies his Log-book, in which it is ſtated, that after the Meeting of the Fleets he ſent an Officer on board the Frigate to inquire about the Cargoes and Deſtination of the Merchantmen, and was anſwered, "that they were Swedes, bound to different Ports in the Mediterranean, laden with Hemp, Iron, Pitch, and Tar." Upon Doubts which Captain Lawford entertained reſpecting the Conduct he ſhould hold in a Situation of ſome Delicacy, he diſpatched immediately a Meſſenger to the Admiralty, keeping the Convoy in his View; and having received Orders from the Admiralty by the Return of his Meſſenger to detain theſe Merchant Ships and carry them into the neareſt Engliſh Port, he ſent Sir Charles Lindſay

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and Captain Raper to communicate them in the civileſt Terms to the Swediſh Commodore, who ſhewed his Inſtructions to repel Force by Force if any Attempt was made to board the Convoy, and declared that he ſhould defend them to the laſt. The Crew of the Swediſh Frigate were immediately at Quarters, Matches lighted, and every Preparation made for an obſtinate Reſiſtance; and the Signal was made on board the Britiſh Squadron to prepare for Battle—In the Night, Poſſeſſion was taken of moſt of the Veſſels, the Swediſh Frigate making many Movements, which were narrowly watched by the Romney, keeping cloſe under his Lee, lower Deck Guns run out, and every Man at his Quarters. In the Morning the Swediſh Frigate hoiſted out an armed Boat, and ſent on board one of the Veſſels which had been taken Poſſeſſion of, and took out by Force the Britiſh Officer who had been left on board, and carried him on board the Frigate, where he was detained. The Swediſh Commander ſent an Officer of his own on board Captain Lawford to complain that he had taken Advantage of the Night to get Poſſeſſion of his Convoy, which was unobſerved by him, or he ſhould aſſuredly have defended them to the laſt. Upon further Conference and Repre-

ſenſation of the Impracticability of Reſiſtance to ſuch a ſuperior Force, he at length agreed to go into Margate Roads, and returned the Britiſh Officer who had been taken out and detained on board the Frigate. After the Arrival in Margate Roads he lamented that he had not exchanged Broadſides; ſaid that he did not conſider his Convoy as detained, and ſhould reſiſt any further Attempt to take Poſſeſſion of them.

Capt. Raper ſtates, that on going on board the Swediſh Frigate he found all the Men at their Quarters, and the Ship clear for Action; that the Commodore ſhewed his Orders and expreſſed his firm Determination to carry them into Execution. Capt. Lawford ſent a Boat with an Officer on board ſeveral of the Convoy, to deſire they would follow into Margate Roads; their Anſwer was, they would obey no One but their own Commodore.

Lieut. M'Dougal deſcribes in like Terms the menacing Appearance and Motions of the Swediſh Frigate.—He was ſent to take Poſſeſſion of Veſſels which would not bring-to without firing at them. On his going on board one of them, the Maſter declared that he had Orders from his Commodore not to give up the Poſſeſſion of her to any Perſon whatever, and repeatedly drove away by force the

Britiſh

Britiſh Mariner, who, by his Order, took Poſſeſſion of the Helm.

Mr. Cockraft is another Witneſs to the ſame Effect, and Mr. Candiſh, the Officer who was taken by force out of the Swediſh Merchantman. Expreſſions of ſtrong Reproach againſt the Proceedings of the Engliſh were addreſſed to him, and the Commodore proteſted, that if he had not been ſurpriſed he would have defended his Convoy to the laſt.

What then do theſe Atteſtations (uncontradicted Atteſtations) prove? To my Apprehenſion they prove moſt clearly theſe Facts—That a large Number of Veſſels, connected all together with each other, and with a Frigate which convoyed them, being bound to different Ports in the Mediterranean, ſome declared to be Enemy's Ports, and others not, with Cargoes conſiſting, amongſt other things, of Naval Stores, were met with, cloſe upon the Britiſh Coaſt, by his Britannic Majeſty's Cruiſers—that a continued Reſiſtance was given by the Frigate to the Act of boarding any of theſe Veſſels by the Britiſh Cruiſers, and that extreme Violence was threatened in order to prevent it; and that the Violence was prevented from proceeding to Extre-

mities only by the ſuperior Britiſh Force which overawed it—that the Act being effected in the Night, by the Prudence of the Britiſh Commander, the Purpoſe of hoſtile Reſiſtance, ſo far from being diſavowed, was maintained to the laſt, and Complaint made that it had been eluded by a Stratagem of the Night—that a forcible Recapture of one Veſſel took place, and a forcible Capture and Detention of one Britiſh Officer who was on board her, and who, as I underſtand the Evidence, was not releaſed till the Superiority of the Britiſh Force had awed this Swediſh Frigate into ſomething of a ſtipulated Submiſſion.

So far go the general Facts.—But all this, it is ſaid, might be the Ignorance or Perverſeneſs of the Swediſh Officer of the Frigate—the Folly or the Fault of the Individual alone. This Suggeſtion is contradicted by Mr. Raper's Log, which proves that the Merchantmen refuſed to admit the Britiſh Officers on board, and declared that they would obey nobody but their own Commodore; a Fact to which Mr. M'Dougal likewiſe bears teſtimony. It is contradicted ſtill more forcibly by the Two Sets of Inſtructions, thoſe belonging to the Frigate and thoſe belonging to the Merchant Veſſels. The latter have been brought into Court by themſelves,

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and of the Authenticity of the former there is no reaſonable Doubt; for they are tranſmitted to me upon the Faith of one of the great publick Offices of the Britiſh Government, and no Perſon diſavows them, and indeed nobody can diſavow them, becauſe they were produced by the Swediſh Captain, who made no Secret whatever of their Contents. Something of a Complaint has been indulged, that the Orders from the Britiſh Admiralty have not been produced; a ſingular Complaint, conſidering that they were never called for by the Claimants; and they were not ordered by the Court, becauſe if the Act of the Captors was illegal, the Orders of the Admiralty would not juſtify it; and the Want of Orders would not vitiate, if the Act was legal. No Myſtery, however, was made about theſe; for the Communication of Orders and Inſtructions was mutual and unreſerved. It is ſaid that the Inſtructions to the Frigate are intended only againſt Cruizers of Tripoli, and an Affidavit has been brought in to ſhew that that Government had begun Hoſtilities againſt the Swedes.—The Language, however, of theſe Inſtructions is as univerſal as Language poſſibly can be; it is pointed againſt the "Fleets of any Nation whatever." It is, however, ſaid that this was merely to avoid giving Offence to the Tripoline Government. But is the Tripo-

line Government the only Government whoſe Delicacy is to be conſulted in ſuch Matters? Are Terms to be uſed alarming to every other State, merely to ſave Appearances with a Government which, they alledge in the Affidavit referred to, had already engaged in unjuſt Hoſtility againſt them? There is, however, no Neceſſity for me to notice this Suggeſtion very particularly, and for this plain Reaſon, that it is merely a Suggeſtion neither proved nor attempted to be proved in any Manner whatever; and the *res geſta* completely proves the Fact to be otherwiſe, becauſe it is clear that if it had been ſo, the Commander of the Frigate muſt have had moſt explicit Inſtructions to that Effect. They could never have put ſuch general Inſtructions on board, meaning that they ſhould be limited in their Application to one particular State, without accompanying them with an Explanation either verbal or written, which it was impoſſible for him to miſunderſtand. Such Explanation was the Maſter-key which they muſt have provided for his private Uſe: Whereas nothing can be more certain than that he had been left without any ſuch reſtrictive Inſtructions; he therefore acts, as any other Man would do, upon the natural Senſe and Meaning of the only Inſtructions he had received. On this Part of the Caſe, therefore, the Queſtion is,

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What is it that theſe general Inſtructions purport?

The Terms of the Inſtructions are theſe—they are incapable of being miſunderſtood: "In caſe the Commander ſhould meet with any Ships of War of other Nations, one or more of any Fleet whatever, then the Commander is to treat them with all poſſible Friendſhip, and not to give any Occaſion of Enmity; but if you meet with a foreign armed Veſſel which ſhould be deſirous of having further Aſſurance that your Frigate belongs to the King of Sweden, then the Commander is by the Swediſh Flag and Salute to make known that it is ſo; or if they would make any Search amongſt the Merchant Veſſels under your Convoy, which ought to be endeavoured to be prevented as much as poſſible, then the Commander is, in caſe ſuch Thing ſhould be inſiſted upon, and that Remonſtrances could not be amicably made, and that notwithſtanding your amicable Comportment the Merchant Ships ſhould nevertheleſs be violently attacked, then Violence muſt be oppoſed againſt Violence." Removing mere Civility of Expreſſion, what is the real Import of theſe Inſtructions? Neither more nor leſs than this, according to my Apprehenſion: "If you meet with the Cruiſers of the belligerent

States, and they expreſs an Intention of viſiting and ſearching the Merchant Ships, you are to talk them out of their Purpoſe if you can; and if you can't, you are to fight them out of it." That is the plain Engliſh, and, I preſume, the plain Swediſh of the Matter.

Were theſe Inſtructions confined to the Frigate, or were they accepted and acted upon by the Merchantmen? That they were acted upon is already ſhewn in the Affidavits which I have ſtated; that they were deliberately accepted, appears from their own Inſtructions, which exactly tally with them. Theſe Inſtructions declare in expreſs Terms, "that all Merchant Ships, during the Time they are under Convoy of his Majeſty's Ships, are earneſtly forbidden to ſuffer the Boats of any foreign Nation to board them for the Sake of Viſitation or Searching; but in caſe ſuch Boats ſhew an Intention of coming alongſide, the Merchant Ships are to ſheer from them." It appears from the Atteſtation that the Obedience of theſe Merchantmen outran the Letter of their Inſtructions.

Whatever then was done upon this Occaſion was not done by the unadviſed Raſhneſs of one Individual, but it was an inſtructed and premeditated

tated Act—an Act common to all the Parties concerned in it; and of which every Part belongs to all; and for which all the Parties, being aſſociated with one common Intent, are legally and equitably anſwerable.

This being the actual State of the Fact, it is proper for me to examine, 2dly, what is their legal State, or, in other Words, to what Conſiderations they are juſtly ſubject according to the Law of Nations; for which Purpoſe I ſtate a few Principles of that Syſtem of Law which I take to be incontrovertible.

1ſt, That the Right of viſiting and ſearching Merchant Ships upon the high Seas, whatever be the Ships, whatever be the Cargoes, whatever be the Deſtinations, is an inconteſtible Right of the lawfully commiſſioned Cruiſers of a belligerent Nation. I ſay, be the Ships, the Cargoes, and the Deſtinations what they may, becauſe, till they are viſited and ſearched it does not appear what the Ships, or the Cargoes, or the Deſtinations are; and it is for the Purpoſe of aſcertaining theſe Points that the Neceſſity of this Right of Viſitation and Search exiſts. This Right is ſo clear in Principle, that no Man can deny it who admits the Legality

Legality of Maritime Capture; becauſe if you are not at Liberty to aſcertain by ſufficient Inquiry whether there is Property that can legally be captured, it is impoſſible to capture. Even thoſe who contend for the inadmiſſible Rule, that free Ships make free Goods, muſt admit the Exerciſe of this Right at leaſt for the Purpoſe of aſcertaining whether the Ships are free Ships or not. The Right is equally clear in Practice; for Practice is uniform and univerſal upon the Subject. The many European Treaties which refer to this Right, refer to it as pre-exiſting, and merely regulate the Exerciſe of it. All Writers upon the Law of Nations unanimouſly acknowledge it, without the Exception even of Hubner himſelf, the great Champion of neutral Privileges: In ſhort, no Man in the leaſt Degree converſant in Subjects of this Kind has ever, that I know of, breathed a Doubt upon it. The Right muſt unqueſtionably be exerciſed with as little of perſonal Harſhneſs and of Vexation in the Mode as poſſible; but ſoften it as much as you can, it is ſtill a Right of Force, though of lawful Force—ſomething in the Nature of civil Proceſs, where Force is employed, but a lawful Force, which cannot lawfully be reſiſted. For it is a wild Conceit that wherever Force is uſed, it may be forcibly reſiſted; a lawful Force cannot

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lawfully be reſiſted. The only Caſe where it can be ſo in Matters of this Nature, is in the State of War and Conflict between two Countries, where one Party has a perfect Right to attack by Force, and the other has an equally perfect Right to repel by Force, but in the relative Situation of two Countries at Peace with each other, no ſuch conflicting Rights can poſſibly co-exiſt.

2dly, That the Authority of the Sovereign of the neutral Country being interpoſed in any Manner of mere Force cannot legally vary the Rights of a lawfully-commiſſioned belligerent Cruiſer; I ſay legally, becauſe what may be given, or be fit to be given, in the Adminiſtration of this Species of Law, to Conſiderations of Comity or of national Policy, are Views of the Matter which ſitting in this Court, I have no Right to entertain. All that I aſſert is, that legally it cannot be maintained, that if a Swediſh commiſſioned Cruiſer, during the Wars of his own Country, has a Right by the Law of Nations to viſit and examine neutral Ships, the King of England, being neutral to Sweden, is authoriſed by that Law to obſtruct the Exerciſe of that Right with reſpect to the Merchant Ships of his Country. I add this, that I cannot but think that if he obſtructed it by Force,

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it would very much reſemble (with all due Reverence be it ſpoken) an Oppoſition of illegal Violence to legal Right. Two Sovereigns may unqueſtionably agree, if they think fit, (as in ſome late Inſtances they have agreed*), by ſpecial Covenant, that the Preſence of one of their armed Ships along with their Merchant Ships ſhall be mutually underſtood to imply that nothing is to be found in that Convoy of Merchant Ships inconſiſtent with Amity or Neutrality; and if they conſent to accept this Pledge, no Third Party has a Right to quarrel with it any more than with any other Pledge which they may agree mutually to accept. But ſurely no Sovereign can legally compel the Acceptance of ſuch a Security by mere Force. The only Security known to the Law of Nations upon this Subject, independent of all ſpecial Covenant, is the Right of perſonal Viſitation and Search, to be exerciſed by thoſe who have the Intereſt in making it. I am not ignorant, that amongſt the looſe Doctrines which modern Fancy, under the various Denominations of Philoſophy and Philanthropy, and I know not what, have thrown upon the World, it has been within theſe

* It is made an Article of Treaty between America and Holland, an. 1782; Article 10. Mart. Tr. vol. ii. p. 255.

few

few Years advanced, or rather insinuated, that it might possibly be well if such a Security were accepted. Upon such unauthorised Speculations it is not necessary for me to descant; the Law and Practice of Nations (I include particularly the Practice of Sweden when it happens to be belligerent) give them no Sort of Countenance; and until that Law and Practice are new-modelled in such a Way as may surrender the known and ancient Rights of some Nations to the present Convenience of other Nations, (which Nations may perhaps remember to forget them, when they happen to be themselves belligerent), no Reverence is due to them; they are the Elements of that System which, if it is consistent, has for its real Purpose an entire Abolition of Capture in War—that is, in other Words, to change the Nature of Hostility, as it has ever existed amongst Mankind, and to introduce a State of Things not yet seen in the World, that of a Military War and a Commercial Peace. If it were fit that such a State should be introduced, it is at least necessary that it should be introduced in an avowed and intelligible Manner, and not in a Way which, professing gravely to adhere to that System which has for Centuries prevailed among civilized States, and urging at the same Time a Pretension utterly incon-

sistent

ſiſtent with all its known Principles, delivers over the whole Matter at once to eternal Controverſy and Conflict, at the Expence of the conſtant Hazard of the Harmony of States, and of the Lives and Safeties of innocent Individuals.

3dly, That the Penalty for the violent Contravention of this Right is the Confiſcation of the Property ſo withheld from Viſitation and Search. For the Proof of this I need only refer to Vattel, one of the moſt correct and certainly not the leaſt indulgent of modern Profeſſors of public Law. In book III. c. vii. ſect. 114. he expreſſes himſelf thus: "*On ne peut empêcher le Tranſport des effets de contrebande, ſi l'on ne viſite pas les vaiſſeaux neutres que l'on rencontre en mer. On eſt donc en droit de les viſiter. Quelques Nations puiſſantes ont refuſé en différents tems de ſe ſoumettre à cette viſite, aujour d'hui un vaiſſeau neutre, qui refuſeroit de ſouffrir la viſite, ſe feroit condamner par cela ſeul, comme étant de bonne priſe.*" Vattel is here to be conſidered not as a Lawyer merely delivering an Opinion, but as a Witneſs aſſerting the Fact—the Fact that ſuch is the exiſting Practice of modern Europe. And to be ſure the only Marvel in the Caſe is, that he ſhould mention it as a Law merely modern, when it is remembered

remembered that it is a Principle, not only of the civil Law, (on which great Part of the Law of Nations is founded), but of the private Juriſprudence of moſt Countries in Europe,—that a contumacious Refuſal to ſubmit to fair Inquiry infers all the Penalties of convicted Guilt. Conformably to this Principle we find in the celebrated French Ordinance of 1681, now in force, Article 12. "That every Veſſel ſhall be good Prize in caſe of Reſiſtance and Combat;" and Valin, in his ſmaller Commentary, p. 81. ſays expreſsly, that although the Expreſſion is in the Conjunctive, yet that the Reſiſtance alone is ſufficient *. He refers to the Spaniſh Ordinance 1718, evidently copied from it, in which it is expreſſed in the Disjunctive, "in caſe of Reſiſtance or Combat." And recent Inſtances are at Hand and within View, in which it appears that Spain continues to act upon this Principle. The firſt Time in which it occurs to my Notice on the Inquiries I have been able to make in the Inſtitutes of our own Country reſpecting Matters of this Nature, excepting what occurs in

* In ſome of the Treaties of France this Article is expreſsly inſerted in the Disjunctive. Tr. between France and the Dutchy of Mecklenburg, Art. 18. An. 1779. Mart. Tr. vol. ii. p. 40. alſo between France and Hamburgh, An. 1769.

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the Black Book of the Admiralty * is in the Order of Council 1664, Article 12. † which directs, "That when any Ship, met withal by the Royal Navy or other Ship commiſſionated, ſhall fight or

* "B. 7. Item ſe aucune nef ou veſſel de la ditte flotte a congie et pouvoir de l'admiral de paſſer hors de la flotte entour aucun meſſage ou autre beſongne, s'ilz encontrent ou trouvent aucuns veſſeaulx eſtranges ſur la mer ou en ports des ennemys, adonques ceulx de noſtre flotte doivent demander des maiſtres et gouverneurs de telz veſſeaulx eſtrangers dont ilz ſont et eulx bien examiner de leur charge enſemblement avecques leurs muniments et endentures, et s'il eſt trouve aucune choſe de ſuſpicion en telz veſſeaulx que les biens ſont aux ennemys, qui ſont trouvez dedens les dits veſſeaulx avec leurs maiſtres et gouverneurs enſemblement avecques les biens dedens icelle eſtants ſauvement ſeront amenees devant l'admiral, et illecques s'il eſt trouve qu'ilz ſont loyaulx marchants et amys ſans ſuſpicion de colérer, les biens ſeront a eulx redelivrees ſans eulx rien dommager, autrement ſeront pris avec leurs biens et raenſonnez comme la loy de mer veult et demande.

"B. 8. Se aucunes de noz nefs ou veſſeaulx encontrent ſur la mer ou en ports aucuns autres veſſeaulx, qui facent rebelletees ou defenſe encontre ceulx de noz nefs ou veſſeaulx, adoncques bien liſe a noz gents les autres comme Ennemys aſſaillir et par forte mayn les prendere et amener entierement, comme ilz les ont gaignez, devant l'admiral ſans eulx piller ou endommager, illecques de prendre ce que loy et couſtume de mer veult et demande, &c."

† During the Struggle for Naval Superiority, which took place between the maritime States of Europe, about the Middle of the Seventeenth Century, the Pretenſion of reſiſting Search by the Protection of Convoy, was put forward with much Caution,

or make Reſiſtance, the ſaid Ship and Goods ſhall be adjudged lawful Prize."—A ſimilar Article occurs in the Proclamation of 1672. I am aware, that

tion, and apparently for the Firſt Time, by Chriſtina Queen of Sweden, Aug. 16, 1653. Art. 4th, "They ſhall in all poſſible Ways decline that they, or any of thoſe that belong to them, be ſearched. For ſeeing they are only ſent to prevent all Inconvenience and clandeſtine Dealings, it is expected that they may be believed, and ſuffered to paſs and proceed on their Courſe unmoleſted, with all ſuch Things as are under their Care."—It was reſtrained to Neutral Ports.—Art. 6th, "And more eſpecially, for certain Reaſons, it is our Command, that our own Men of War do chiefly, and in the Beginning, ſteer their Courſe to ſuch Ports as are neutral in the Engliſh and Dutch War, till we give any farther Directions on that Account. However, without any Hindrance to our own Subjects, that intend to carry on their own free Trade to England and Holland without Convoy." Thurloe's State Papers, vol. i. p. 424.

In 1655 it was taken up by Holland: "They have a Deſign to hinder the Protector all Viſitation and Search; and this by very ſtrong and ſufficient Convoy; and by this Means they will draw all Trade to themſelves and their Ships." Ibid. vol. iv. p. 203.

In May 1656 there happened an actual Rencounter on this Subject between a Fleet of Merchantmen from Cadiz, (Spain being then at War with England), under the Convoy of De Ruyter, with Seven Men of War, and the Commodore of ſome Engliſh Frigates. "Antwerp. We have certain News of the Arrival of De Ruyter in Zealand from Cadiz, from whence he brought Stores of Plate, moſtly belonging to Merchants of this City; he was met withal at Sea by ſome Engliſh Frigates, but finding themſelves too weak they let him go." Ib. vol. iv. p. 740. See alſo the particular Account of what paſſed, given by a Dutch Officer to the States General; "That upon De Ruy-

that in thoſe Orders and Proclamations are to be found ſome Articles not very conſiſtent with the Law of Nations as underſtood now, or indeed at that

ter declaring that there was not any Thing on board belonging to the King of Spain, they parted." Ib. vol. iv. p. 730. It appears, however, that the Arrival occaſioned great Triumph in Holland and Flanders, and that the Fleet was deeply laden with Silver for the King of Spain, and the Service of his Armies in Flanders. "De Ruyter brought in his own Ship, and others in his Fleet, the Sum of 20,000,000 (perhaps Rials) of Gold and Silver, the greateſt Part for the King of Spain's Uſe and the Merchants of Brabant and Flanders." Ibid. vol. iv. p. 748. 732. The 12th Article of the Engl. Ord. of 1664 might perhaps be pointed againſt theſe Pretenſions.

In another Letter in the ſame Collection, 21ſt Sept. 1657, from Nieuport the Dutch Embaſſador in England.—We find the Subject of Convoy was ſtrongly preſſed at that Time, and reſiſted on the Part of this Country; "reſpecting Secret Articles," concerning the Viſitation of Ships which are convoyed under the Flag of the State. I acquainted their Lordſhips, that of old all Kings and States had made a Difference between particular Ships ſailing upon their Riſques and Adventures and between Ships of the State and thoſe which paſs the Sea under their Flag and Protection. That their High and Mighty Lords were of an Opinion that it does ſtrengthen the Security of this State, that the Ships of the State and Officers ſhould be reſponſible, as it were, for the Ships ſailing under their Convoy; and that which I had propoſed in my laſt Memorandum concerning the ſame on Behalf of their High and Mighty Lords was no new Thing, but that Plan had been moſt commonly propoſed in all the Treaties ſince the Year 1651, in that Manner that without regulating the ſame according to the ſaid Articles, the Troubles at Sea, whereof I had ſo often complained, could not be removed and prevented, and I alleged ſeveral Examples. Upon which

that Time; for they are expreſsly cenſured by Lord Clarendon *. But the Article I refer to is not of thoſe he reprehends; and it is obſervable

which now one then the other of the ſaid Three Lords † replied, and did very much inſiſt, that it could not conſiſt with their Security; that they could not nor ought to truſt ſo much to particular Captains at Sea; that it would be an Introduction and Encouragement to diſaffected Perſons to aſſiſt the Enemy, and urged eſpecially that in no former Treaties any ſuch Articles were found, and that their High and Mighty Lords had no Reaſon to deſire now any ſuch Novelty. I ſaid that the Practice on this Side in regard to ſearching and viſiting Ships without Difference was a new Thing, and that the Inhabitants of the United Netherlands, feeling the Trouble and Inconveniency of it, had Reaſon to inſiſt that it may be rectified by a good Regulation." Vol vi. p. 511. See alſo for the former Conference, vol. v. p. 663.

It appears that ſo many Objections had ariſen on the Treaty propoſed on the Part of Holland, that it was found neceſſary to form an entirely new Projet.—Vol. vi. p. 523. 558.

In a ſubſequent Letter from the Hague, 30th Nov. 1657, it appears that the Treaty broke off on this Difference: "Le Sieur Nieuport n'eſt pas encore ici arrivé, mais il eſcrit auſſi d'avoir prins ſon congé. Il eſt fort croyable qui'il ne ſera guère content d'avoir faillé à achever le traiteé de la marine; néanmoins, je m'imagine que la Hollande à preſent ne feroit pas fort marry de ne l'avoir pas achevé, pour ne ſe pas oſter la libertè de viſiter des mêmes en cette guerre contre Portugal." Thurloe's State Papers, vol. vi. p. 622.

On the Subject of Search generally, without any expreſſed reference to Convoy, there is this Letter from Cromwell to

† Thurloe, Wolſely, Jones.

* Lord Clarendon's Life, p. 242.

able that Sir Robert Wiſeman, then the King's Advocate General, who reported upon the Articles in 1673, and expreſſes a Diſapprobation of ſome of them as harſh and novel, does not mark this Article with any Obſervation of Cenſure. I am therefore warranted in ſaying, that it was the Rule, and the undiſputed Rule, of the Britiſh Admiralty. I will not ſay that that Rule may not have been broken in upon in ſome Inſtances by Conſiderations of Comity or of Policy, by which it may be fit that the Adminiſtration of this Species of Law ſhould be tempered in the Hands of thoſe Tribunals which have a Right to entertain and apply them; for no Man can deny that a State may recede from its extreme Rights, and that its Supreme Councils are authorized to determine in what Caſes it may be fit to do ſo, the particular Captor having in no Caſe any

General Montagu: "The Secretary hath communicated to us your Letter of the 28th, by which you acquaint him with the Directions you have given for the ſearching of a Fluſhing and other Dutch Ships, which (as you are informed) have Bullion and other Goods aboard them belonging to the Spaniard, the declared Enemy of this State. There is no Queſtion to be made but what you have directed therein is agreeable both to the Laws of Nations and the particular Treaties which are between this Commonwealth and the United Provinces, and therefore we deſire you to continue the ſaid Direction, and to require the Captains to be careful in doing their Duty therein.

"Hampton Court, 30th Auguſt 1657."

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other Right and Title than what the State itſelf would poſſeſs under the ſame Facts of Capture. But I ſtand with Confidence upon all fair Principles of Reaſon,—upon the diſtinct Authority of Vattel,—upon the Inſtitutes of other great maritime Countries, as well as thoſe of our own Country,—when I venture to lay it down, that by the Law of Nations, as now underſtood, a deliberate and continued Reſiſtance to Search, on the part of a neutral Veſſel to a lawful Cruiſer, is followed by the legal Conſequence of Confiſcation.

3. The third propoſed Inquiry was, Whether any ſpecial Circumſtances preceded, accompanied, or followed the Tranſaction, which ought in any Manner or Degree to affect the Application of the general Principles?

The Firſt Ground of Exemption ſtated on the Part of the Claimants is the Treaty with Sweden 1661, Article 12, and it was inſiſted by Dr. Laurence, that although the belligerent Country is authoriſed by the Treaty to exerciſe Rights of Inquiry in the firſt Inſtance, yet that theſe Rights

were not exercised in the Manner therein prescribed. It is an obvious Answer to that Observation, that this Treaty never had in its Contemplation the extraordinary Case of an armed Vessel sent in Company with Merchantmen for the very Purpose of beating off all Inquiry and Search. On the contrary it supposes an Inquiry for certain Papers, and if they are not exhibited, or "there is any other just and strong Cause of Suspicion," then the Ship is to undergo Search *. The Treaty, therefore, recognises

* It is said by Secretary Thurloe, in his Conference with the Dutch Ambassador, December 1656, "that the Point of Passes was very considerable to the State, and that the same was never agreed to in any Treaty with any Nation, but lately to Sweden." Th. St. P. vol. v. p. 663.—This seems to fix the Date of their Introduction in Prize Matters.

A similar Reference to the Certificate of Foreign Magistrates, with the same primary but inconclusive Credit ascribed to them, appears to have been established in Denmark by Frederick II. in 1583, as a Custom House Regulation respecting the Customs and Sund Duties payable by Foreign Merchants—speaking of Abuses, "We, not minding any longer to suffer the same, do therefore will that henceforth every Man which uses his Trade of Merchandize and Navigation through our Custom Towns and Streams do cause a certain and just Brief of all the laden Merchandizes and Goods to be comprehended in the Certificates which he is to take under the Seal of his Magistrate, and deliver the same to our Customers, with this Warning, that if any Man arrive there without such true and just Certificate, and any Hindrance and Inconvenience do happen unto him in that Respect, the Ship being searched, that then he impute the same unto

recogniſes the Rights of Inquiry and Search, and the Violation of thoſe Rights is not leſs a Violation of the Treaty than it is of the general Law of Nations. It is ſaid that the Demand ought firſt to have been made upon the Frigate: I know of no other Rule but that of mere Courteſey which requires this; for this extraordinary Caſe of an armed Ship travelling along with Merchant Ships is not a *caſus fœderis* that is at all ſo provided for in the Treaty: However, if it is a Rule, it was complied with in the preſent Inſtance, and the Anſwer returned was, that "they were Swediſh Ships bound to various Ports of the Mediterranean, laden with Iron, Hemp, Pitch, and Tar." The Queſtion then comes, what Rights accrued upon the Receipt of this Anſwer? I ſay, firſt, that a Right accrued of ſending on board each particular Ship for their ſeveral Papers; for each particular Ship, without Doubt, had its own Papers: The Frigate could not have them; and the Captors had a Right to ſend on board them

unto himſelf, and not unto us or ours; and if upon cauſe of Suſpicion the Ships ſhould be ſearched, notwithſtanding that a particular Certificate had been delivered; and that in them more Merchants' Goods ſhould be found than were comprehended in the Certificates which were brought in, then not only thoſe Goods, but the whole Ship and Goods, as being forfeited, ſhall be confiſcated and ſeized upon." Promulged 1583. Rym. Fœd. vol. xvi. p. 347. 352.

to demand thoſe Papers, as well under the Treaty as under the general Law. A ſecond Right that accrued upon the receiving of this Anſwer was, a Right of detaining ſuch Veſſels as were carrying Cargoes ſo compoſed, either wholly or in Part, to any Port of the Enemies of this Country; for that Tar, Pitch, and Hemp, going to the Enemy's Uſe, are liable to be ſeized as Contraband in their own Nature, cannot, I conceive, be doubted under the modern Law of Nations; though formerly, when the Hoſtilities of Europe were leſs Naval than they have ſince become, they were of a diſputable Nature, and perhaps continued ſo at the Time of making that Treaty, or at leaſt at the Time of making that Treaty which is the Baſis of it, I mean the Treaty in which Whitlock was employed in the Year 1656: For I conceive that Valin expreſſes the Truth of this Matter, when he ſays, p. 68. "*De droit ces choſes* (ſpeaking of Naval Stores) *ſont de contrabande aujourd'hui et depuis le commencement de ce ſiecle, ce qui n'étoit pas autrefois néanmoins*;" and Vattel, the beſt recent Writer upon theſe Matters, explicitly admits amongſt poſitive Contraband, "*les bois et tout ce qui ſert à la conſtruction et à l'armément de vaiſſeaux de guerre.*" Upon this Principle was founded the modern explanatory Article

of the Daniſh Treaty, entered into in 1780, on the Part of Great Britain, by a Noble * Lord then Secretary of State, whoſe Attention had been peculiarly turned to Subjects of this Nature. I am therefore of Opinion, that although it might be ſhewn that the Nature of theſe Commodities had been ſubject to ſome Controverſy in the Time of Whitlock, when the fundamental Treaty was conſtructed, and that therefore a diſcreet Silence was obſerved reſpecting them in the Compoſition of that Treaty and of the latter Treaty derived from it, yet that the Expoſition which the later Judgment and Practice of Europe has given upon this Subject would in ſome Degree affect and apply what the Treaties had been content to leave on that indefinite and diſputable Footing on which the Notions then more generally prevailing in Europe had placed it. Certain it is, that in the Year 1750 the Lords of Appeal in this Country declared Pitch and Tar, the Produce of Sweden, and on board a Swediſh Ship bound to a French Port, to be contraband, and ſubject to Confiſcation, in the memorable Caſe of the *Med Good's Hjelpe*. In the more modern Underſtanding of this Matter, Goods of this Nature being the Produce of Swe-

* The late Earl of Mansfield.

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den, and the actual Property of Swedes, and conveyed by their own Navigation, have been deemed, in Britiſh Courts of Admiralty, upon a Principle of Indulgence to the native Products and ordinary Commerce of that Country, ſubject only to the milder Rights of Pre-occupancy and Pre-emption; or to the Rights of preventing the Goods from being carried to the Enemy, and of applying them to your own Uſe, making a juſt pecuniary Compenſation for them. But to theſe Rights, being bound to an Enemy's Port, they are clearly ſubject, and may be detained without any Violation of national or individual Juſtice. Thirdly; another Right accrued, that of bringing in for a more deliberate Inquiry than could poſſibly be conducted at Sea upon ſuch a Number of Veſſels, even thoſe which profeſſed to carry Cargoes with a neutral Deſtination. Was there or was there not the juſt and grave Suſpicion, which the Treaty refers to, excited by the Circumſtances of ſuch a Number of Veſſels with ſuch Cargoes intended to ſail all along the extended Coaſts of the ſeveral publick Enemies of this Kingdom, under the Protection of an armed Frigate aſſociated with them for the very Purpoſe of beating off by Force all particular Enquiry? But ſuppoſing even that there was not, is this the Manner in which the Obſervance of the Treaty or

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of the Law of Nations is to be enforced? Certainly not by the Treaty itſelf; for the Remedy for Infraction is provided in Compenſations to be levied, and Puniſhments to be inflicted upon Delinquents by their own reſpective Sovereigns. Article 12. How ſtands it by the general Law? I don't ſay that Caſes may not occur in which a Ship may be authoriſed by the natural Rights of Self-preſervation to defend itſelf againſt extreme Violence threatened by a Cruiſer groſsly abuſing his Commiſſion; but where the utmoſt Injury threatened is the being carried in for Inquiry into the neareſt Port, ſubject to a full Reſponſibility in Coſts and Damages if this is done vexatiouſly and without juſt Cauſe; a Merchant Veſſel has not a Right to ſay for itſelf, (and an armed Veſſel has not a Right to ſay for it), "I will ſubmit to no ſuch Inquiry, but I will take the Law into my own Hands by Force." What is to be the Iſſue, if each neutral Veſſel has a Right to judge for itſelf in the firſt Inſtance, whether it is rightly detained, and to act upon that Judgment to the Extent of uſing Force?—Surely nothing but Battle and Bloodſhed, as often as there is any Thing like an Equality of Force or an Equality of Spirit. For how often will the Caſe occur in which a neutral Veſſel will judge itſelf to be rightly detained? How far the Peace of the World will be

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benefited by taking the Matter from off its preſent Footing and putting it upon this, is for the Advocates of ſuch a Meaſure to explain. I take the Rule of Law to be, that the Veſſel ſhall ſubmit to the Inquiry propoſed, looking with Confidence to thoſe Tribunals whoſe nobleſt Office (and I hope not the leaſt acceptable to them) is to relieve, by Compenſation, Inconveniences of this Kind, where they have happened through Accident or Error; and to redreſs, by Compenſation and Puniſhment, Injuries that have been committed by Deſign.

The Second ſpecial Ground taken on the Part of the Claimants was, that the Intention was never carried into Act. And I agree with Dr. Laurence, that if the Intention was voluntarily and clearly abandoned, an Intention ſo abandoned, or even a ſlight Heſitation about it, would not conſtitute a Violation of Right. But how ſtands the Fact in the preſent Caſe? The Intention gives Way, ſo far as it does give Way, only to a ſuperior Force. It is for thoſe who give ſuch Inſtructions to recollect, that the Averment of an Abandonment of Intention cannot poſſibly be ſet up, becauſe the Inſtructions are delivered to Perſons who are bound to obey them, and who have no Authority to vary.

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The Intention is neceſſarily unchangeable; and being ſo, I do not ſee the Perſon who could fairly contradict me, if I was to aſſert that the Delivery and Acceptance of ſuch Inſtructions, and the ſailing under them, were ſufficient to complete the Act of Hoſtility. However that might be, the preſent Fact is, that the Commander ſails with Inſtructions to prevent Inquiry and Search by Force, which Inſtructions he is bound to obey, and which he is prevented from acting upon to their utmoſt Extent only by an irreſiſtible Force. Under ſuch Circumſtances how does the Preſumption of Abandonment ariſe? If it does, mark the Conſequences: If he meets with a ſuperior Force, he abandons his hoſtile Purpoſe; if he meets with an inferior Force, he carries it into complete Effect. How much is this ſhort of the ordinary State of actual Hoſtility? What is Hoſtility? It is Violence where you can uſe Violence with Succeſs;—and where you cannot, it is Submiſſion and ſtriking your Colours. Nothing can be more clear, upon the Peruſal of theſe Atteſtations, than that this Gentleman abandoned his Purpoſe merely as a ſubdued Perſon in an unequal Conteſt. The Reſiſtance is carried on as far as it can be; and when it can maintain itſelf no longer, *fugit indignata.*

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3. It is ſaid that the Papers were not immediately taken Poſſeſſion of nor Proceedings inſtituted till long after the Arrival in Port. Theſe are unqueſtionably Irregularities; but I agree with the King's Advocate in maintaining, that they are not ſuch Irregularities as will deſtroy the Captor's Right of proceeding, for the Claimant had his Remedy in the Way of a Monition. How theſe Delays were occaſioned, whether in conſequence of pending Negotiations, (as has been repeatedly aſſerted in the Courſe of the Argument), I am not judicially informed. If ſuch Negotiations ever exiſted, I may have Reaſon perſonally to lament that they have proved ineffectual. But the legal Conſequence of that Inefficiency undoubtedly is, that the Queſtion of Law remains the ſame as if no ſuch Negotiation had ever been thought of.

4. It is laſtly ſaid, that they have proceeded only againſt the Merchant Veſſels, and not againſt the Frigate, the principal Wrong-doer. On what Grounds was this done—whether on that Sort of Comity and Reſpect which is not unuſually ſhewn to the immediate Property of great and auguſt Sovereigns, or how otherwiſe, I am again not judicially informed; but it can be no legal Bar to the Right of a Plaintiff to proceed, that he has,

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for ſome Reaſon or other, declined to proceed againſt another Party, againſt whom he had an equal or poſſibly a ſuperior Title. And as to the particular Caſe of one Veſſel which had obtained her Releaſe and a Re-delivery of her Papers, the Act of the Captors may perhaps furniſh a reaſonable Ground of Diſtinction with reſpect to her own ſpecial Caſe; but its Effect, be it what it may, is confined to herſelf, and can be extended no farther.

I am of Opinion, therefore, that ſpecial Circumſtances do not exiſt which can take the Caſe out of the Rule which is generally applicable to ſuch a State of Facts; and I have already ſtated that Rule to be the Confiſcation of all the Property forcibly withheld from Inquiry and Search. It may be fitting (for any Thing that I know) that other Conſiderations ſhould be interpoſed to ſoften the Severity of the Rule, if the Rule can be juſtly taxed with Severity; but I have neither the Knowledge of any ſuch Conſiderations, nor Authority to apply them. If any Negotiations have pledged (as has been intimated) the Honour and good Faith of the Country, I can only ſay that it has been much the Habit of this Country to redeem Pledges of ſo ſacred a Nature. But my Buſineſs is merely to decide whether, in a Court of the Law of Nations,

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a Pretenſion can be legally maintained which has for its Purpoſe neither more nor leſs than to extinguiſh the Right of maritime Capture in War; and to do this, how? by the direct Uſe of hoſtile Force on the Part of a neutral State. It is high Time that the legal Merit of ſuch a Pretenſion ſhould be diſpoſed of one Way or other—it has been for ſome few Years paſt preparing in Europe—it is extremely fit that it ſhould be brought to the Teſt of a judicial Deciſion; for a worſe State of Things cannot exiſt, than that of an undetermined Conflict between the antient Law of Nations, as underſtood and practiſed for Centuries by civiliſed Nations, and a modern Project of Innovation utterly inconſiſtent with it; and in my Apprehenſion, not more inconſiſtent with it, than with the Amity of neighbouring States, and the perſonal Safety of their reſpective Subjects.

The only remaining Queſtion which I have to conſider is, the Matter of Expences; and this I think myſelf bound to diſpoſe of with as much Tenderneſs as I can uſe in favour of Individuals. It is to be obſerved, that the Queſtion itſelf was of an Importance and Delicacy ſomewhat beyond the Powers of Deciſion belonging to ſuch Perſons—The Authority of their Country has been in ſome Degree ſurpriſed in this Matter—The Captors have been

been extremely tardy in proceeding to Adjudication. Attending to all these Considerations, I think the Claimants are clearly entitled to have their Expences charged upon the Value of the Property up to the Time of the Order for further Proof. From that Time the Property might have been withdrawn upon Bail; and it is no Answer to the Court to say that this Gentleman or another Gentleman did not think it adviseable to commit their private Fortunes in the Extent of the Security required. It is the Business of foreign Owners who have brought their Ships and Cargoes into such Situations of Difficulty, to find the Means of relieving them when the Opportunity can be used. I go sufficient Lengths in allowing Expences for the further Time in which Orders could have been obtained from Sweden, and I fix this at the Distance of Two Months from the Order of further Proof; and, condemning the Ship and Cargo, I direct all private Adventures to be restored.

This is the Substance of what I have to pronounce judicially on this Case, after weighing with the most anxious Care the several Facts and the learned Arguments which have been applied to them. I deliver it to my Country—and to foreign Countries—with little Diffidence in the Rec-

titude of the Judgment itſelf: I have ſtill more Satisfaction in feeling an entire Confidence in the Rectitude of the Conſiderations under which it has been formed.

(No. 33.)

DECLARATION.

St. Peterſburgh, 16th Aug. 1800.

EUROPE had applauded the Meaſures which were taken by the greater Part of the Maritime Powers to render ſacred the Principles of a wiſe and impartial Neutrality, when, in 1780, a Maritime War between Two great Powers made it incumbent on the Reſt to provide for the Safety of the Commerce and Navigation of their Subjects. Every Act founded upon Juſtice muſt meet with univerſal Approbation, and this was in Effect merely re-eſtabliſhing the Principles of the Rights of Nations.

Ruſſia then had the ineſtimable Advantage of bringing about this ſalutary Arrangement, and of being the Regulator, as it may be called, of the ſeveral Means which were to make it reſpected; each Power who had acceded to it, found incalculable Advantages therein; and Ruſſia made it ſerve as the Baſis of almoſt all her ſubſequent Treaties of Commerce.

General Conſent had made a Kind of Code of Nations of the Maxims which compoſed it, it was likewiſe that of Humanity: The common Intereſt was the Guarantee of its Maintenance and its Execution.

However, at the Period when the Diſſolution of a great Power cauſed its fatal Influence to be felt by almoſt all the others, and when the greater Part of political Ties were either broken or changed their Object in a War produced by it, diſſimilar to all others, and of which the multiplied and extraordinary Events deſtroyed all former Combinations, a freſh Sanction to theſe Maxims was, perhaps, too much neglected to be given. The Attention being abſorbed by ſuch great Intereſts, could not be applied with ſufficient Care to maintain theſe ſalutary Stipulations; beſides, the Juſtice of the belligerent Powers ought to have ſupplied a Remedy, and the Neutral Courts relying on it, thought to have ſecured a Guaranty for Commerce and Navigation ſufficient to make them reſpected at leaſt by legitimate Governments, when a recent Event taught them to what Point the Independence of Crowns may be expoſed by neglecting to re-eſtabliſh the Principles and the Maxims in which

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the Security and Safeguard of neutral Powers, during the Continuance of this War, conſiſt.

The $\frac{13}{24}$ July laſt, a Daniſh Frigate convoying ſome Veſſels of that Nation to different Ports, was met at the Entrance of the Channel by ſome Engliſh Frigates. — Notwithſtanding the Declaration of the Daniſh Captain, that he had no contraband Merchandize on board, and on his refuſing in conſequence to ſuffer himſelf to be ſearched, he was attacked, and ſhortly after compelled to yield to the Superiority of Numbers; was carried, together with his Convoy, into the Engliſh Ports.

The firſt Care of his Daniſh Majeſty, the Friend and Ally of his Majeſty the Emperor of all the Ruſſias, was to communicate this Event to him, and to ſolicit his Opinion in what Light this manifeſt Violation of the Rights of Nations, and of the Principles of Neutrality, which form the Baſis of his Treaty of Commerce with Ruſſia, was to be regarded.

Although his Imperial Majeſty cannot but ſtill perſuade himſelf that a ſimilar Violation will be highly diſapproved of by His Britannick Majeſty, and is willing to believe, moreover, that His Juſtice

will not only refuſe His Conſent to it, but that beſides, the Court of Copenhagen will obtain an equitable Satisfaction proportionate to the Inſult, his Imperial Majeſty has not the leſs felt the Neceſſity in order to avoid ſimilar Violences in future, to re-eſtabliſh the Principles of Neutrality under the Protection of which his Subjects, as well as thoſe of the neutral Powers, may peaceably enjoy the Fruits of their Induſtry, and of all the Advantages of neutral Nations, by navigating upon all Seas, without being hereafter expoſed to the arbitrary Proceedings which any of the belligerent Powers would not be permitted to exerciſe againſt them with Impunity.

The moſt manifeſt Intereſt of his Imperial Majeſty, as well with regard to the Navigation of his own Subjects as with reſpect to that of the Nations moſt contiguous to his Ports, being effectually to guaranty the Seas which waſh the Coaſts of his Empire from ſimilar Attacks and Violences, he particularly invites the Powers who have Ports in the ſame Diſtricts, and eſpecially his Majeſty the King of Pruſſia, his Majeſty the King of Denmark, and his Majeſty the King of Sweden, to concur with his Imperial Majeſty in the Meaſures which he will ſucceſſively and reſpectively impart to them,

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in order to re-eſtabliſh in their full Force the Principles of the Armed Neutrality, and thus to ſecure the Liberty of the Seas; manifeſting to them by this Declaration, that he will employ every Means compatible with his Dignity to maintain the Honour of his Flag and of that of his Allies, as well as to place their reſpective Subjects out of the Reach of a ſimilar Infraction of the Right reſpected by every People, and to let them enjoy, under the Protection of their reſpective Governments, all the Advantages of a free Commerce and Navigation.

His Imperial Majeſty, equally juſt and impartial, declares at the ſame Time that, whilſt he lays down a Rule for the ſtrict Obſervance of the Rights of Neutrality, he will not infringe them towards any one, and that the Meaſures which he will in his Wiſdom take, ſhall guide the Conduct of his Officers and Commanders and that of his Subjects, according to the Views of the ſtricteſt Juſtice, and in ſuch Manner as that the belligerent Powers themſelves cannot refuſe to acknowledge the Neceſſity and the Benevolence of his Intentions.

It is by the expreſs Order of his Imperial Majeſty that his Miniſter addreſſes the preſent Decla-

ration to his Excellency the Baron of Stedingk, Ambaſſador Extraordinary from his Majeſty the King of Sweden, requeſting him to communicate it without Delay to his Court.

(Signed)

Le Comte de Rostopsin.

Le Comte de Panin.

(No. 34.)

CONVENTION between His Britannick Majeſty and the King of Denmark, ſigned at Copenhagen, the 29th Auguſt 1800.

THEIR Britannick and Daniſh Majeſties, animated with an equal Deſire of preventing, by a previous Agreement, the Conſequences of the Difference which has ariſen between them, from the Reſult of the Rencounter which took place between the Daniſh Frigate the Freya and ſome Engliſh Ships of War, and of re-eſtabliſhing, in their full Extent, thoſe Relations of Friendſhip and Confidence by which they have been long ſince united, have, for this Purpoſe, named and conſtituted for their Plenipotentiaries, to wit, His Britannick Majeſty, Lord Whitworth, Knight of the Order of the Bath; and his Daniſh Majeſty, Count Bernſtorff, his Chamberlain, and Secretary of State for Foreign Affairs; who, after having communicated to each other their reſpective full Powers, have agreed upon the following Articles:

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I. The Queſtion of Right, relative to the viſiting neutral Veſſels going under Convoy, ſhall be deferred for an ulterior Diſcuſſion.

II. The Daniſh Frigate the Freya, and the Ships found under her Convoy, ſhall be immediately releaſed, and the ſaid Frigate ſhall be ſupplied, in His Britannick Majeſty's Ports, with every Thing of which ſhe may be in need for her Repair, according to the Uſage practiſed between friendly and allied Powers.

III. In order to prevent ſimilar Rencounters from renewing Contentions of the like Nature, his Daniſh Majeſty will ſuſpend his Convoys, until ſuch ulterior Explanations on this Point ſhall have effected a definitive Convention.

IV. If it ſhould, however, happen that Rencounters of this Kind have taken place before the Arrival of the Inſtructions deſtined to prevent them, the Inſtructions ſhall, in that Caſe, be conſidered as null, and the Arrangement which would have reſulted from them, ſhall be looked upon as compriſed in the Object of the preſent Convention.

V. This Convention ſhall be ratified in Three Weeks, to be computed from the Day of its Signature,

nature, or ſooner, if it can be done. In Witneſs whereof, we, the underſigned Plenipotentiaries of their Britannick and Daniſh Majeſties, have ſigned, in their Name, and by virtue of our full Powers, the preſent Convention, and have affixed thereto the Seal of our Arms.

Done at Copenhagen, the 29th of Auguſt 1800.

(L. S.) WHITWORTH.
(L. S.) C. BERNSTORFF.

(No. 35.)

CONVENTION for the Re-eſtabliſhment of an Armed Neutrality, between his Majeſty the King of Sweden of the one Part, and His Majeſty the Emperor of all the Ruſſias on the other Part, concluded and ſigned at St. Peterſburgh, the 4th (16th of December), 1800, accepted and ratified by his Swediſh Majeſty on the 20th of December, and by his Imperial Majeſty of all the Ruſſias on the 8th (20th December), in the ſame Year. [From the Stockholm Gazette of the 3d of Feb. 1801.]

In the Name of the Moſt Holy and Undivided Trinity.

IN order that the Freedom of Navigation, and the Security of the Merchandize of the Neutral Powers, may be eſtabliſhed, and the Principles of the Laws of Nations be fully aſcertained, during the Continuance of the preſent Maritime War, his Majeſty the King of Sweden, and his Majeſty the Emperor of all the Ruſſias, actuated by their Love of Juſtice, and by a reciprocal Deſire to promote whatever may be for the publick Advantage

tage of their reſpective States, have to that Effect determined to give a new Sanction to thoſe Principles of their Neutrality, which are in their Nature indiſſoluble, and require that it may be reſpected by all the Powers intereſted in their Preſervation. With this View their Majeſties have, by their Declaration of the 15th of Auguſt to the Northern Courts who are equally concerned in the Maintenance of thoſe general Regulations antiently recognized, given them to underſtand how ſincerely it is the Object of their Hearts to reſtore, in its full Independence, the Right of all Nations to convoy their Ships and Merchandize freely, and without being ſubject to the Controul of the Powers at War. His Swediſh Majeſty imparted his Wiſhes and his Sentiments to his great Allies, and an happy Conformity of their mutual Intereſts has induced them to adopt the Reſolution of re-eſtabliſhing that Syſtem of an armed Neutrality which was attended with ſuch Advantages during the American War, and to renew its beneficial Principles in a Convention adapted to the preſent Circumſtances. To this End his Majeſty the King of Sweden, and his Imperial Majeſty of all the Ruſſias, have nominated, as their Plenipotentiaries, namely, his Swediſh Majeſty, Baron Count Von Stedingk, Ambaſſador Extraordinary to his

Imperial Majeſty of all the Ruſſias, Lieutenant-General, Chamberlain of the Queen Dowager, Colonel of a Regiment of Infantry, Knight, and Commander of the Order of the Sword, and Knight of the French Order *Pour les Merites Militaires*; and his Imperial Majeſty of all the Ruſſias, Baron Count Theodore Von Roſtopſin, his Right Truſty Privy Councillor, Member of the Council Principales, Miniſter of the College of Foreign Affairs, Director General of the Poſts of the Empire, Grand Chancellor and Grand Croſs of the Sovereign Order of St. John of Jeruſalem, Knight of the Firſt Claſs of the Orders of St. Andrew, St. Alexander Newſky, and St. Anne, Knight of the Order of St. Lazarus, *de l'Annonciade*, of St. Morrice and St. Lazarus, of St. Ferdinand and St. Hubert; who, after exchanging their reſpective full Powers, have agreed upon the following Articles:

Article I.

His Majeſty the King of Sweden and his Majeſty the Emperor of all the Ruſſias declare that they will ſtrictly prohibit the Exportation of contraband Merchandiſe on the Part of their Subjects with every Power whatever, whether at pre-

ſent engaged in War, or which may hereafter be engaged in War.

II.

In order to prevent all Doubts and Miſunderſtandings as to what ſhall be conſidered contraband, his Majeſty the King of Sweden and his Imperial Majeſty of all the Ruſſias declare, that they will acknowledge the following Articles as contraband, namely, Cannons, Mortars, Fire Arms, Balls, Flints, Flint Stones, Matches, Gunpowder, Saltpetre, Sulphur, Helmets, Pikes, Swords, Hangers, Cartridge Boxes, Saddles and Bridles, with the Exception of ſuch a Quantity of the above Articles as may be neceſſary for the Defence of the Ships and their Crews; all other Articles not herein enumerated, ſhall not be conſidered as War or Naval Stores, they ſhall not be ſubject to Confiſcation, but ſhall paſs free and without Reſtraint. It is alſo hereby agreed, that the preſent Article ſhall be without Prejudice to the particular Stipulations of former Treaties with the Powers at War, by virtue of which the Things abovementioned are allowed or prohibited.

III. And

III.

And whereas it is resolved, That whatever, by virtue of the foregoing Article, can be deemed contraband, shall be excluded from the Commerce of Neutral Nations; in like Manner his Majesty the King of Sweden, and his Imperial Majesty of all the Russias, will and determine that all other Merchandize shall be and remain free; and in order that the general Principles of the Laws of Nature, of which the Freedom of Trade and Navigation as well as the Rights of Neutral Nations are the immediate Consequence, may be placed under a competent and sure Safeguard, they have resolved no longer to delay that voluntary Explanation from which they have hitherto been restrained by Motives of their separate and temporary interests. With this View they have hereby determined,

1. That every Ship may freely navigate from one Harbour to another, and on the Coasts of the belligerent Nations.

2. That the Effects which belong to the Subjects of the belligerent Powers in Neutral Ships, with

with the Exception of contraband Goods, ſhall be free.

3. That, in order to determine what ſhall be conſidered as a blockaded Harbour, ſuch Denomination ſhall be admitted to apply only where the Diſpoſition and Number of the Ships of the Power by which it is inveſted, ſhall be ſuch as to render it apparently hazardous to enter; and that every Ship which ſhall go into a blockaded Harbour, that is evidently ſo blockaded, violates the preſent Convention as much as if the Commander of the Blockade had previouſly adviſed it of the State of the Harbour, and it had nevertheleſs endeavoured by Force or Artifice to obtain Admiſſion.

4. That, with regard to Neutral Ships, except thoſe which for juſt Reaſons and upon evident Grounds ſhall be detained, Sentence ſhall be pronounced without Delay; the Proceedings againſt them ſhall be uniform, prompt, and lawful. Over and above the Indemnity to which they ſhall be entitled for the Damage they ſhall have ſuſtained, complete Satisfaction ſhall be given for the Inſult committed againſt the Flag of their Majeſties.

5. *That the Declaration of the Officers who ſhall command the Ship of War, or Ships of War, of the King or Emperor, which ſhall be convoying One or more Merchant Ships, that the Convoy has no contraband Goods on board, ſhall be ſufficient; and that no Search of his Ship, or the other Ships of the Convoy, ſhall be permitted. And the better to enſure Reſpect to thoſe Principles, and the Stipulations founded upon them, which their diſintereſted Wiſhes to preſerve the impreſcriptible Rights of neutral Nations have ſuggeſted, the high contracting Parties, to prove their Sincerity and Juſtice, will give the ſtricteſt Orders to their Captains, as well of their Ships of War, as of their Merchant Ships, to load no Part of their Ships, or ſecretly to have on board any Articles, which, by virtue of the preſent Convention, may be conſidered as contraband; and for the more completely carrying into Execution this Command, they will reſpectively take Care to give Directions to their Courts of Admiralty to publiſh it whenever they ſhall think it neceſſary, and to this End the Regulation which ſhall contain this Prohibition, under the ſeveral Penalties, ſhall be printed at the End of the preſent Act, that no One may plead Ignorance* *.

* The Article printed in Italics does not form any Part of the Convention or an Armed Neutrality of 1780. *Vide* Page 106.

IV. In

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In order to place the Commerce of their Subjects upon the moſt legal and permanent Baſis, his Majeſty the King of Sweden and his Majeſty the Emperor of all the Ruſſias have deemed it expedient to equip a Number of Ships of War and Frigates, which ſhall be charged to ſee that Object obtained, and the Squadrons of each Power ſhall take thoſe Stations, and protect thoſe Convoys which their Commerce and their Navigation may require, and who ſhall be conformable to the Courſe of Trade of each Nation.

V.

To provide againſt all Inconveniencies which may proceed from any Nation abuſing the Privilege of their Flag, it is eſtabliſhed, as a Regulation not to be departed from, that every Tranſport, be it whoſe it may, belonging to the Country whoſe Flag it bears, ſhall have on board a Captain, and the Half of the Crew compoſed of the Subjects of that Country, and the Paſſport ſhall be drawn up in due and regular Form. Every Tranſport which ſhall not obſerve theſe Regulations, or ſhall violate

the Command printed at the End of this preſent Convention, ſhall forfeit all Right to the Protection of the contracting Parties, and the Government to which it may belong ſhall alone be reſponſible for all the Loſs, Damage, or Inconvenience it may ſuſtain.

VI.

Should it nevertheleſs happen that the Merchant Ships of One of the Powers ſhould find itſelf in a Situation where the Ships of War of that Nation are not ſtationed, and where they cannot have the Protection of their own Convoys, in ſuch Caſe the Commandant of the Ship of War of the other Power, if it ſhall be required, ſhall duly and faithfully afford ſuch Aſſiſtance as may be neceſſary. The Ships of War and Frigates of each Nation ſhall afford Protection and Aſſiſtance to the Merchant Veſſels of the other, provided, in the mean Time, that the Veſſel requiring ſuch Aſſiſtance ſhall not have violated the Principles of the Neutrality, by having carried on any illicit Commerce.

VII. This

VII.

This Convention ſhall have no retroſpective Operation, conſequently it ſhall have no Reference to any Differences that exiſted previous to its Concluſion. Its Application ſhall only be to future Acts of Violence and Aggreſſion, and it ſhall form the Baſis of a Syſtem for the Protection of all the Neutral Nations of Europe, whoſe Rights may hereafter be denied or violated.

VIII.

Should it, notwithſtanding all the poſſible Care of the Powers, and notwithſtanding the Obſervance of the moſt perfect Neutrality on their Sides, ſo happen that the Merchant Ships of his Majeſty the King of Sweden, or of his Imperial Majeſty of all the Ruſſias, ſhould be inſulted, plundered, or taken by the Ships of War or Privateers of one or other of the belligerent Powers, the Miniſter of the injured Party ſhall forthwith repreſent the ſame to the Government whoſe Ship of War or Privateer ſhall have committed ſuch Act of Violence; he ſhall reclaim the captured Veſſels, demand due Satisfaction, and by no Means loſe Sight of the Inſult offered to the Flag. The

Miniſter of the other contracting Power ſhall alſo enforce the Complaint in the moſt energetic and determined Manner poſſible, and they ſhall generally and uniformly act in Concert together. Should their juſt Complaint meet with no Redreſs, or ſhould it be poſtponed from Time to Time, then ſhall their Majeſties have Recourſe to Repriſals againſt ſuch Power as ſhall have refuſed to do Juſtice; and that they ſhall, by every poſſible Means, give Effect to ſuch Repriſals.

IX.

Should it happen that one or the other of the Two Powers, or both, on Account of, or from Diſlike to the preſent Convention, or any Circumſtance connected with it, ſhould be diſquieted, moleſted, or attacked, in ſuch Caſe it is agreed, that the Two Powers ſhall make it a common Cauſe, mutually to defend each other; and that they ſhall reciprocally employ every Exertion to obtain full and complete Satisfaction, as well for the Inſult done to their Flag as for the Injury ſuſtained by their Subjects.

X. The

X.

The Principles and Regulations ſtipulated and ſettled by this preſent Act ſhall apply to every Maritime War, by which Europe may unhappily be diſquieted. Theſe Stipulations ſhall alſo be conſidered as perpetual, and upon all Occaſions ſhall be appealed to by the contracting Powers for the Regulation of their Commerce and Navigation, and for the Maintenance of the Rights of Neutral Nations.

XI.

As the Object and main Conſideration of this Convention is to aſſure the general Freedom of Commerce and Navigation, his Majeſty the King of Sweden and his Imperial Majeſty of all the Ruſſias hereby agree, and bind themſelves to each other, to give their Conſent that other Neutral Powers may become Parties to it, adopt its Principles, conform to its Obligations, and partake of its Advantages.

XII.

In order that the belligerent Powers may not have to plead Ignorance of the Arrangements

concluded between their ſacred Majeſties, Information ſhall be given to ſuch belligerent Powers of the Regulations they have determined upon, which are ſo little of an hoſtile Nature, that they can be detrimental to no other Country whatever, but, on the contrary, are only calculated to ſecure the Commerce and Navigation of their reſpective Subjects.

XIII.

The preſent Convention ſhall be ratified by the Two Contracting Parties, and the Ratification ſhall be exchanged, in due and good Form, within Six Weeks, or ſooner, if poſſible, from the Day of ſigning it.

In Teſtimony of the ſame, we, the Underſigned, furniſhed with full Powers, have hereunto ſigned our Names and affixed our Seals.

Given at St. Peterſburgh the 4-16th of December 1800.

(L. S.) Count Von Stedingk.

(L. S.) Count Von Rostopsin.

(No. 36.)

NOTE from Mr. Drummond to Count Bernſtorff, 28th Dec. 1800.

THE Court of London having been informed, that Denmark carries on with Activity Negotiations very hoſtile to the Intereſts of the Britiſh Empire, conceives, that it cannot better fulfil the Duties preſcribed to it by ſuch a Circumſtance, than by addreſſing itſelf directly to the Miniſtry of His Daniſh Majeſty, to demand from it an open and ſatisfactory Explanation on this Point.

A Confederacy between Denmark and ſome other Powers is openly ſpoken of in every Court of Europe; which Confederacy has for its Object the oppoſing, by Force, the Exerciſe of thoſe Principles of Maritime Right upon which the Naval Power of the Britiſh Empire in a great Meaſure depends, and which, in all Wars, have been followed by Maritime States, and recognized by their Tribunals.

His Britannic Majeſty, relying with Confidence on the Loyalty of His Daniſh Majeſty, and on the Faith

Faith of thoſe Engagements contracted between the Two Courts, which ſtill are very recent, did not demand of him any Explanation on this Subject. He was willing to await the Moment when the Court of Copenhagen ſhould deem it incumbent on it to contradict theſe Reports ſo hurtful to its good Faith, and ſo little compatible with the Maintenance of that good Intelligence, the Reeſtabliſhment of which between the Two Countries had been effected.

The preſent Conduct, and publick Declarations of One of the Powers, who, it is aſſerted, have entered into this Confederacy, allow no longer His Majeſty to keep towards the other Powers that Silence which He has hitherto obſerved.

The Underſigned is therefore directed to demand of his Excellency Count Bernſtorff, a direct, open, and ſatisfactory Anſwer on the Nature, the Object, and the Extent of thoſe Obligations which His Daniſh Majeſty may have contracted, or of thoſe Negotiations which he carries on with regard to a Point which ſo nearly concerns the Dignity of His Britannic Majeſty, and the Intereſts of His People.

His

His Britannic Majeſty, always prepared to meet reciprocally all Marks of Friendſhip which he may receive on the Part of His Daniſh Majeſty, hopes to find in the Anſwer of the Court of Copenhagen to this Demand, only a freſh Opportunity of manifeſting theſe Diſpoſitions.

(Signed) W. DRUMMOND.

(No. 37.)

NOTE from Count Bernſtorff to Mr. Drummond, December 31, 1800.

THE Underſigned, Secretary of State for Foreign Affairs, having laid before the King his Maſter, the Contents of the Note which Mr. Drummond did him the Honour to deliver to him on the 27th Inſt. has juſt been authorized to make to it the following Anſwer:

The Court of London muſt have received very inaccurate Information, to have been able to preſume for a Moment that Denmark had entertained Projects hoſtile to it, or incompatible with the Maintenance of that good Intelligence which ſubſiſts between the Two Crowns; and the King is very much beholden to His Britannic Majeſty for affording him this Opportunity of contradicting, in the moſt poſitive Manner, Reports as ill-founded, as contrary to his moſt decided Sentiments.

The Negotiation which is carrying on at St. Peterſburgh between Ruſſia, Sweden, and Denmark, has for its Object only the renewing of the

the Engagements which were contracted in the Years 1780 and 1781 by the ſame Powers, for the Safety of their Navigation, and which were then made known to every Court of Europe.

His Majeſty the Emperor of Ruſſia having propoſed to the Northern Powers to re-eſtabliſh theſe Engagements in their primitive Form, Denmark heſitated ſo much the leſs to conſent to it, as, far from having ever abandoned the Principles profeſſed in 1780, She thought it incumbent on Herſelf to ſuſtain and claim them on all Occaſions, and not to admit of any other Modifications with reſpect to them, than thoſe which reſult from Her particular Treaties with belligerent Powers. Very far from wiſhing to conſtrain thoſe Powers in the exerciſe of thoſe Rights which War aſſigns them, the Views of Denmark, in the Negotiations with its Allies, are abſolutely defenſive, pacific, and incapable of offending any one. The Engagements it deſigns making will be founded on the ſtricteſt Performance of the Duties of Neutrality, and of the Obligations which its Treaties impoſe upon it; and if it wiſhes its innocent Navigation to be ſecure from the manifeſt Abuſes and Violences to which a maritime War too readily gives riſe, it thinks it a due reſpect to the belligerent Powers

to ſuppoſe, that, far from being willing to authorize or tolerate theſe Abuſes, they are willing on their Side to take the moſt expedient Meaſures to prevent or ſuppreſs them.

Denmark has made a Myſtery to no Perſon of the Object of the Negotiation, the Nature of which has been miſrepreſented to the Court of London; but it did not conceive itſelf deviating from the accuſtomed Forms in wiſhing to await the definitive Reſult of that Negotiation, for the Purpoſe of making it known officially to the belligerent Powers.

The Underſigned not knowing that either of the Powers engaged in this Negotiation has made a Declaration or adopted any Meaſures relative to its Object, at which Great Britain can be offended or take Umbrage, cannot, without further Explanation, anſwer to this Point of Mr. Drummond's Note.

He has ſtill leſs Conception under what Head the Engagements taken by the previous Convention of the 29th Auguſt laſt can be conſidered as contrary to thoſe which Denmark intends taking with the neutral

neutral and reunited Northern Powers; and, in all Caſes, in which he may be called upon to combat or diſpel thoſe Doubts which may have ariſen with regard to the good Faith of the King, he will look upon his Taſk as very eaſy, as long as this good Faith ſhall be found in the Reproaches or the Suſpicions advanced againſt his Majeſty.

He flatters himſelf, that the Engliſh Government, after having received the required Explanations, will have the Frankneſs to agree, that the proviſional and momentary Abandonment not of a Principle, the Queſtion of which remains undecided, but of a Meaſure, the Right of which has never been, and never can be conteſted, is not in Oppoſition to the general and permanent Principles, reſpecting which the Northern Powers are on the Point of re-eſtabliſhing a Concert, which, far from being able to compromiſe their Neutrality, is deſtined but to ſtrengthen it.

The Underſigned is deſirous of believing that theſe Explanations will appear ſatisfactory to the Court of London, and that it will render Juſtice to the Intentions and to the Sentiments of the King, and, particularly, to the invariable Deſire of his Majeſty to maintain and cement, by all the

Means

Means in his Power, the Friendſhip and the good Intelligence which ſubſiſts between Denmark and Great Britain.

He has the Honour to offer to Mr. Drummond the Aſſurance of his moſt diſtinguiſhed Conſideration.

(Signed) C. Bernstorff.

Copenhagen, Dec. 31, 1800.

(No. 38.)

NOTE from Lord Grenville to Count W. Jarlſberg and Baron d'Ehrenſvard, January 15, 1801.

THE Underſigned, His Majeſty's Principal Secretary of State for Foreign Affairs, has received His Majeſty's Commands to make to {Count Wedel Jarlſberg, / Baron Ehrenſvard,} Miniſters, &c. of His {Daniſh / Swediſh} Majeſty, the following Communication.

His Majeſty has learnt with ſincere Regret, that at the Moment when the Court of Peterſburgh is purſuing the moſt hoſtile Meaſures againſt the Perſons and Property of His Majeſty's Subjects, the Two Courts of Copenhagen and Stockholm have actually concluded with that Power a Convention for the Eſtabliſhment of an armed Maritime Confederacy in the North of Europe.

If the Circumſtances under which this Convention has been negotiated and ſigned, could

leave in His Majeſty's Mind the ſmalleſt Doubt of the Objects to which the Confederacy is really directed, that Doubt would have been removed both by the Declarations and Conduct of the Court of Peterſburgh, but ſtill more by the recent and official Avowal of the Court of Copenhagen.

It is well known in what a Spirit of Hoſtility towards Great Britain an Attempt was made in the Year 1780, to introduce into Europe a new Code of Maritime Law; and to ſupport, by Force, a Syſtem of Innovations deſtructive of the deareſt Intereſts of the Britiſh Empire. But His Majeſty had ſince had the Satisfaction of ſeeing that injurious and offenſive Meaſure, in Practice completely abandoned.

At the Commencement of the preſent War, the Court of Peterſburgh, which had taken the principal Part in the Formation of the former League, entered with His Majeſty into Engagements, not only inconſiſtent with the Convention of 1780, but of a directly oppoſite Nature; Engagements which are ſtill in force, and the Execution of which His Majeſty is at this Moment entitled to claim on every Principle of good Faith. During the

the whole Courſe of the War, His Majeſty's Conduct towards the other Baltic Powers, and all the Deciſions of His Courts having Juriſdiction in Matters of Prize, have uniformly and avowedly been regulated by thoſe Principles alone which before the Year 1780 governed the Proceedings of all the other Maritime Tribunals of Europe. Nor has any Intimation been ever given to His Majeſty by thoſe Powers of an Intention on their Part to revive the former League, until the preſent Period, when He is at the ſame Moment informed of the actual Signature of the Convention, and, apprized by the official Declaration of One of the contracting Parties, that its Object is "to re-eſtabliſh, in their primitive Form, the Engagements contracted in the Years 1780 and 1781."

It is therefore now no longer doubtful that the Intention of this Confederacy, and of the Naval Armaments which the Contracting Parties have been carrying on with Activity, is that of enabling them to maintain, by Force, Pretenſions ſo manifeſtly unſupported by any Ground of Right, that the very Power who firſt advanced them, when neutral, has been found the firſt to reſiſt them, when it was itſelf engaged in War, and the Eſtabliſhment of which, if it ever could take place,

muſt be deſtructive of one of the principal Sources of the Strength and Security of the Britiſh Empire.

With the Knowledge of theſe Facts, His Majeſty would be wanting in what He owes to the Intereſts of His People, to the Dignity of His Crown, and to the Honour of His Flag, raiſed by the Diſcipline, Valour, and Skill of His Navy, to a Pitch of unexampled Glory, if He were to delay to take ſuch proviſional Steps, as may be moſt effectual both to repel the Aggreſſion which He has already experienced, and to counteract the hoſtile Effects of the League formed againſt Him.

His Majeſty has therefore directed the Underſigned to make to { Count Wedel Jarlſberg, / Baron Ehrenſvard, } this official Notification, that an Embargo is proviſionally laid on all { Daniſh / Swediſh } Veſſels in the Ports of His Majeſty's Dominions. But that, in adopting this Meaſure, His Majeſty will be careful that no harſh or rigorous Conduct ſhall be held on His Part, towards unoffending Individuals; and that His Majeſty ſtill entertains the ſincere Deſire, that the Circumſtances which have rendered theſe Steps indiſpenſably

penſably neceſſary, may yet be done away, and that He may find Himſelf enabled to look with Confidence to the Reſtoration of His ancient Relations with the Court of { Stockholm, / Copenhagen, } ſuch as they exiſted before the mutual good Underſtanding was diſturbed by the projected Innovation of the Year 1780, and by the preſent Attempt to revive the ſame Pretenſions.

(No. 39)

EXTRACT of a Letter from Konigſberg, 18th January 1801. [From the Hamburgh Gazette.]

WE learn from the Court Gazette of St. Peterſburgh, that the Emperor of Ruſſia has cauſed a Declaration to be ſent to all neutral Ports, importing, that Ruſſian Ships of War have already put to Sea, for the Purpoſe of capturing all Veſſels conveying Merchandize to England.

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